

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

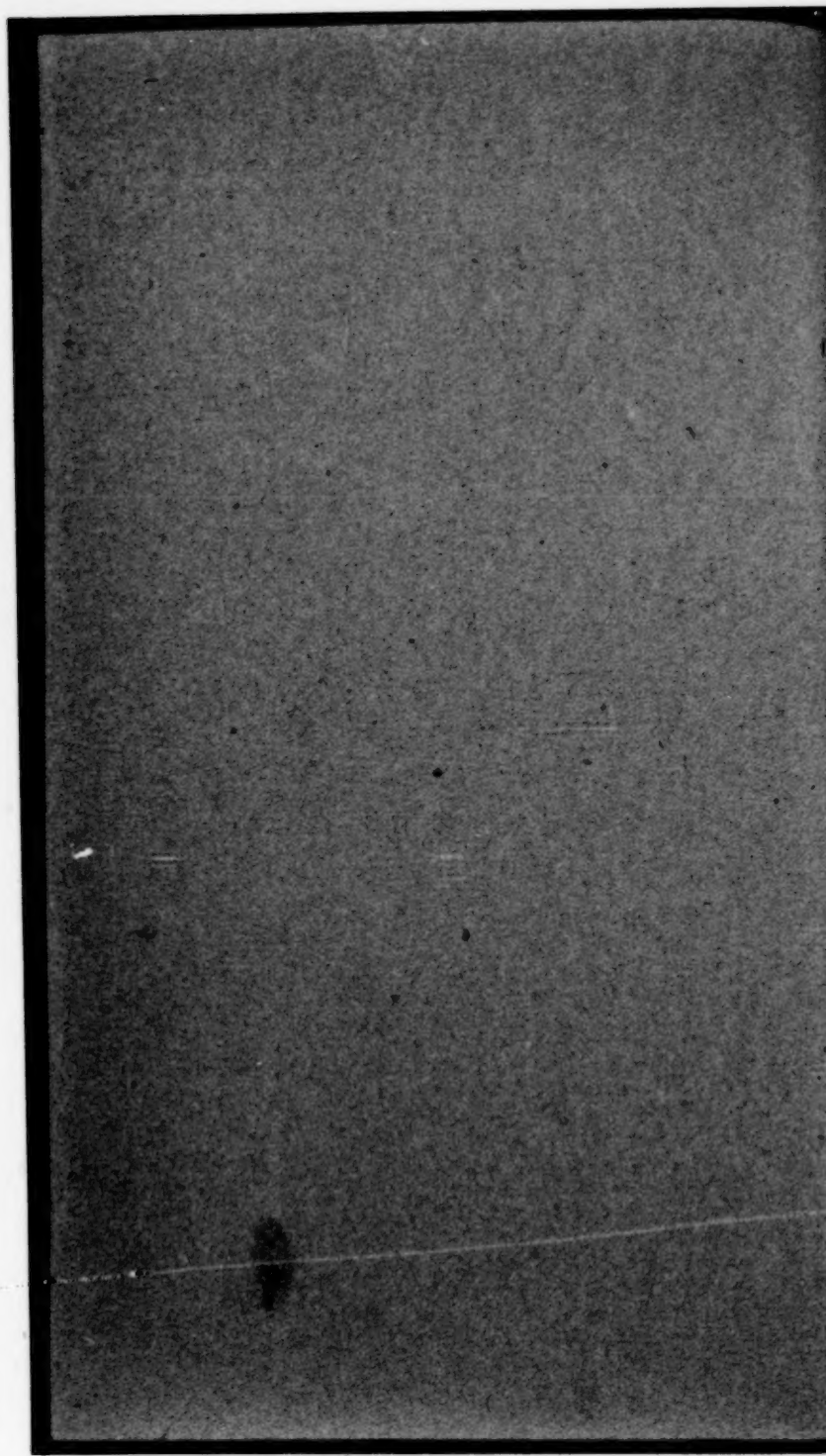
COMMENCEMENT TERM, 1926

No. 262

W. A. BULLOCK, JUDGE OF THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA,
AND WILLIAM A. MOOR, TRUSTEE, PLAINTIFFS IN
ERROR.

THE STATE OF FLORIDA UPON THE PETITION OF THE
RAILROAD COMMISSION OF THE STATE OF FLORIDA
ET AL.

IN ERROR OF THE SUPREME COURT OF THE STATE OF FLORIDA



(27,510)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 755.

W. S. BULLOCK, JUDGE OF THE CIRCUIT COURT OF THE
FIFTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA,
AND WILLIAM S. HOOD, TRUSTEE, PLAINTIFFS IN
ERROR,

vs.

THE STATE OF FLORIDA UPON THE RELATION OF THE
RAILROAD COMMISSION OF THE STATE OF FLORIDA
ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF FLORIDA.

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1 Be it remembered that on the 10th day of May, A. D. 1919, at a Regular Term of the Supreme Court of the State of Florida, came the Relators, the Railroad Commissioners of the State of Florida and Van C. Swearingen, the Attorney General of the State of Florida, and filed in the Clerk's Office of the Supreme Court of the State of Florida a petition and suggestion for writ of prohibition to be issued out of said Court, directed to the Circuit Court of the Fifth Judicial Circuit of the State of Florida, and the Honorable W. S. Bullock, Judge of said Court, in accordance with the prayer of said petition and suggestion, which said petition and suggestion and subsequent proceedings to final judgment and writ of error thereto are in the words and figures as follows, to-wit:

2 To the Honorable Justices of the Supreme Court of Florida:

The petition of the Railroad Commissioners of the State of Florida, and Van C. Swearingen, Attorney General of Florida respectfully shows and suggests unto your Honors as follows:

That the Oklawaha Valley Railroad Company is a railroad corporation organized and existing under the laws of the State of Florida, and enjoying all the rights, privileges and benefits thereof. That it owns a line of railroad from Silver Springs, in the County of Marion, to a point of junction with the Georgia, Southern & Florida Railroad Company, near Palatka, in the County of Putnam, in the State of Florida. The said line so owned being 45½ miles long, more or less. That the charter of the said Railroad Company is still in force and effect, and that the said Railroad Company is obligated to the State of Florida to continue the operation of said railroad, in accordance with the obligations imposed upon it by law upon its acceptance of its charter, and the commencement of operation as a common carrier.

3 That on the 6th day of November, 1917, the said Oklawaha Valley Railroad Company, by and through S. P. Hollinrake, its Vice-President and General Manager, applied to the Railroad Commissioners of Florida, for permission to discontinue the operation of its trains over its said road. A copy of said application being hereto attached and marked Exhibit "A."

That the said application came on for hearing before the Railroad Commissioners of Florida, in the Court House in the city of Ocala, Florida, on November 14th, 1917, at 2 o'clock in the afternoon. That after hearing in said cause, the said Railroad Commissioners of Florida, by their order entered in the premises, made and entered on the 16th day of November, 1917, denied the petition of the said Oklawaha Valley Railroad Company to discontinue operation of its trains. A copy of said Order of the Railroad Commissioners in the premises, being hereto attached and marked Exhibit "B."

That thereafter, the Railroad Commissioners were informed and advised that the said Oklawaha Valley Railroad Company intended

to disobey and disregard the order of the Railroad Commissioners in the premises, dated November 16, 1917, and intended to entirely discontinue the operation of its train service over its said railroad, without regard to the order of the Railroad Commissioners in the premises. Accordingly, the Railroad Commissioners applied to the Honorable Jas. T. Wills, Judge of the Circuit Court of the 8th Judicial Circuit in and for Putnam County, for an injunction en-

joining and restraining the said Ocklawaha Valley Railroad Company from discontinuing operation as a common carrier. That on November 26, 1917, the Hon. J. T. Wills, upon application of the said Railroad Commissioners, made and entered a restraining order in the premises,—a copy of which order is hereto attached and marked Exhibit "T."

That in disobedience to said order of said Court, the said Ocklawaha Valley Railroad Company did discontinue operation of its trains on or about December 7th, 1917. That thereafter, on or about December 12th, 1917, the Railroad Commissioners of Florida filed in the Circuit Court of Marion County, Florida, an ancillary bill, to carry into effect the order of the Judge of the Eighth Judicial Circuit, made in the premises.

That sometime between November the 26th and December 12th, 1917, W. S. Hood, as Trustee, for the Assets Realization Company, a foreign corporation, filed a bill in the Circuit Court of Marion County, Florida, against the Ocklawaha Valley Railroad Company, to foreclose a trust deed given by the said Ocklawaha Valley Railroad Company to the Assets Realization Company, a foreign corporation, or to a Trustee for its benefit, to secure certain bonded indebtedness of said Ocklawaha Valley Railroad Company, and that upon the application of the complainant made in that suit, S. P. Hollinrake, Vice-President and General Manager of said Railroad Company was appointed receiver of all the properties of said Company. That in and by said bill, the said Hood, Trustee, prayed for an order of the Court in the premises authorizing the sale of all the property of said Ocklawaha Valley Railroad Company,

either as a common carrier, or as junk, depending upon the most favorable offer made for the purchase of said property at the foreclosure sale thereof.

That on December 24th, 1917, Hon. W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida, made and entered his decree in said cause, authorizing the sale of all the property of the said Ocklawaha Valley Railroad Company in the alternative, said property first to be offered for sale as a common carrier, and if as much as \$200,000.00 should be bid under the first offering, the Master should not offer said property for sale as junk, as provided for under the second offering—but providing that should said property not bring said amount, or should the bid under the second offering exceed the bid under the first offering by \$100,000.00, the property should be sold by said Master as junk. A copy of the decree of said Court being hereto attached and marked Exhibit "D."

That thereafter, the application of the Railroad Commissioners, for the appointment of a receiver asked for in their bill of complaint

filed in the Circuit Court of Marion County, Florida, to aid the said Railroad Commissioners in carrying out the provisions of the decree of the Circuit Court of Putnam County, Florida, came on for hearing before the Honorable W. S. Bullock, and by certain orders made by him on January 11th, 19th and 22nd, S. P. Hollinrake was removed as Receiver, in the suit of Hood, Trustee, vs. Ocklawaha Valley Railroad Company, and H. S. Cummings was appointed

Receiver in said cause, with authority to operate the Ocklawaha Valley Railroad Company, as the Court's receiver in the premises. The order of sale decreed by the Court in its decree of December 24th, 1917, was continued until the further order of the Court in the premises. That the said H. S. Cummings is still operating said Ocklawaha Valley Railroad Company as receiver of the Court, upon authority of the Court in the premises.

That prior to the appointment of said last named receiver, application was made on the part of the Railroad Commissioners in the suit of Hood, Trustee, vs. Ocklawaha Valley Railroad Company, to consolidate with said suit, the suit of the State of Florida, brought by the Railroad Commissioners of Florida, in the Circuit Court of Marion County, Florida, and that while no order was made by the Court consolidating the said suits, by agreement of Counsel for the respective parties, said suits were considered jointly by the Court in making its orders appointing H. S. Cummings, Receiver, but that thereafter, upon an application made by respondents in the suit brought by the Railroad Commissioners, in the name of the State of Florida, that suit was dismissed by the Court.

That in pursuance of a subsequent order of the Court made in the premises, the Master appointed by the Court in its decree of December 24, 1917, advertised the property and franchise of said Railroad Company decreed to be sold in said decree, for sale on Monday, February 4th, 1919, in accordance with the terms of the decree of the Court made on December 24th, 1917, and that said

Master did, on February 4th, 1919, sell said property. That at said sale, the Assets Realization Company, holders of the bonds, for whose benefit said suit was brought, became the purchaser of said property, and all rights, titles and interests of said Railroad Company under the second alternative of said decree, which second alternative relieves the purchaser at said sale from operating said property as a carrier, and authorizes the dismantling and junking of said carrier's property.

That from time to time, the Railroad Commissioners of Florida, applied to the Court for authority to intervene in the suit of Hood, Trustee, vs. Ocklawaha Valley Railroad Company, for the purpose of representing the State in the interest of its citizens, and the right of the State to compel the continued operation of said railroad Company as a carrier; and that it was denied the right to intervene prior to March 27th, 1919, when on said date, by an Order of the Court made in the premises, the State of Florida through the Railroad Commissioners of Florida, was authorized to intervene in said cause. A copy of said Order being hereto attached and marked Exhibit "E".

The petition of intervention filed in said cause, among other things, suggested to the Court, that the Court was without authority to decree the sale of said carrier's property as junk, and was without authority to put in the said carrier to discontinue operation, or to relieve it of its obligations to the State of Florida, in a foreclosure proceeding brought to enforce a lien; and suggested further that by law the Railroad Commissioners of Florida, had been empowered with authority and jurisdiction over question of operation and train service of carriers, and that the Court was without jurisdiction to hear, consider or determine said question, without application first being made to the Railroad Commissioners of Florida.

Whereupon, the Court referred said Cause to a Master to determine, among other things, the jurisdiction of the Court upon application of a creditor, to authorize the sale of the property of a common carrier as junk. And that if the Court had jurisdiction, did the facts in the suit before the Court, warrant the sale of said property as junk, and should the sale made on February 4th, 1919, be approved. The said Master decided that the Court had jurisdiction, and that the facts in said cause, warrant the sale of said property as junk, and that the sale should be approved.

The report of the Master came on for hearing before the Court upon exceptions taken thereto, and the Judge of said Court has concurred in the findings of said Master, and has announced he will enter an order in said cause, confirming the sale of said property as junk, thereby permitting the railroad to discontinue operation as a common carrier, to have its road bed dismantled, torn up and removed, and its obligation to the State of Florida avoided, of which privilege the purchaser will immediately avail itself.

It is further suggested to the Court, that the Judge of the Circuit Court of the Fifth Judicial Circuit, is without jurisdiction in said suit, to pass on and determine the right of said Railroad Company to discontinue operation of train services, since such question has been by law, placed under the jurisdiction of the Railroad Commissioners of Florida. It is further suggested that should said Court have such power and jurisdiction, it is without jurisdiction in that suit, that being merely a suit by a creditor of said carrier, to enforce a lien given by a statute. That it — not a suit to marshal assets, or to distribute the property of an insolvent corporation. Adequate remedy by appeal is not afforded petitioners in said cause.

It is further suggested to the Court, that the Assets Realization Company, the purchaser of said carrier's property at said foreclosure under the second alternative of said decree, entered into a contract with R. C. Hoffman & Company, incorporated, prior to the entry of the decree of foreclosure of December 24th, 1917, said contract being of date of December 19th, 1917, for the sale of the rails and other property of said Railroad Company, as junk, agreeing by said contract to dismantle, take up and deliver at Palatka, Florida, the rails of said Railroad Company. A copy of said contract is not in the possession of your petitioners.

Your petitioners further suggest to this Honorable Court, that that part of the decree of the Court of the Fifth Judicial Circuit, entered by the Honorable W. S. Bullock, on the 24th day of December, 1917, in the suit of W. S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, which authorized the sale of said property in the second alternative, was and is void, and that the Court was and is without power, authority or jurisdiction to make such decree in the premises, or to approve the sale of said property so made under said void decree. But notwithstanding, said Court was, and is without power, authority or jurisdiction to decree the sale of said railroad property as junk, to permit its roadbed to be dismantled, torn up and removed, and its obligation to the State of Florida, to continue operation as a common carrier, avoided, and is without jurisdiction to approve said sale so made; the said Court is proceeding to continue to hear said cause, and the application of the complainant for a confirmation of said sale, and has announced that on May 12th, 1919, he will enter his order in said cause, confirming said sale.

Your petitioners further show that the said W. S. Hood, Trustee, and the Assets Realization Company, are non residents of the State of Florida, residing, as your petitioners are informed, and believe, in the city of New York, and State of New York, and that they are at present outside of the limits of the State of Florida, but their attorneys of record in said cause, are the firm of Hocker & Martin, of Ocala, Florida.

Your petitioners, therefore pray that a writ of prohibition may issue out of this Court, prohibiting the said Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Marion County, and the Hon. W. S. Bullock, Judge of said Court, from approving or confirming the sale of said carrier's property for junk to be dismantled, and from authorizing or decreeing the dismantling, taking up or removing any of the rails or tracks of said carrier, or from exercising any further jurisdiction in said cause, relating to the junking or dismantling of said property.

And your petitioners further pray that you Honors may make such other and further orders in the premises, as may be proper, and as are required by law.

And your petitioners will ever pray.

R. HUDSON BURR,

Chairman.

VAN C. SWEARINGEN,

Attorney General.

DOZIER A. DE VANE,

Attorneys for Petitioners.

11 STATE OF FLORIDA,
County of Leon:

I hereby certify that on this 9th day of May, 1919, before me personally appeared Dozier A. De Vane, who being first duly sworn says:

That he is the Attorney for the Railroad Commissioners of Florida. That he has read the foregoing suggestion, and known the contents thereof, and that the allegations therein contained are true. Depo-
nent further says that Exhibits C & E attached to said suggestion are true and correct copies of the original papers of which said exhibits purport to be a copy, and are made from carbons of such originals in possession of affiant.

DOZIER A. DE VANE.

Subscribed and sworn to before me this 9th day of May, A. D. 1919.
G. T. WHITFIELD,
Clerk Supreme Court.

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EXHIBIT "A."

Ocklawaha Valley Railroad Company.

Ocala, Fla., November 6, 1917.

To the Honorable Railroad Commission,
Tallahassee, Fla.

GENTLEMEN:

The war has brought about a crisis in the affairs of the Ocklawaha Valley Railroad Company and we are therefore petitioning your honorable body for permission to discontinue the operation of our trains at the earliest possible moment, certainly not later than mid-night of November 30th, 1917.

The Ocklawaha Valley Railroad Company, since its organization in April, 1915, has never been able to earn the expenses of the operation of its property, and this condition has grown worse from month to month, until now the burden is too great to be borne any longer.

Everything that goes into the maintenance and operation of a railroad has increased from 30% to 450%, within the past twenty-four months, as you gentlemen undoubtedly know, and with its small earning capacity, you will readily see that the operation of this road cannot be continued under these conditions.

We trust, therefore, that you will give a favorable reply to this request at an early date.

OCKLAHAHA VALLEY RAILROAD CO.,

By S. P. HOLLINRAKE,

Vice Pres't & Gen. Mgr.

STATE OF FLORIDA,

County of Leon:

I Lewis G. Thompson, Secretary of the Railroad Commission of Florida, hereby certify that the attached paper is a true copy of the original on file in the office of the Railroad Commissioners of Florida, as shown by the records and files of said office.

Witness my hand and seal this 9th day of May, 1919.

LEWIS G. THOMPSON, [SEAL.]

Secretary Florida Railroad Commission.

13 EXHIBIT "B."

Order No. 576.
File No. 3956.

Before the Railroad Commissioners of the State of Florida.

In the Matter of the Application of the OCKLAWAHA VALLEY RAILROAD COMPANY to Discontinue Operation.

Pursuant to Notice No. 162, dated the 12th day of November, 1917, this matter came on for hearing before the Railroad Commissioners of the State of Florida, in the Court House in Ocala, Florida, November 14th, 1917, at 2 o'clock in the afternoon, and then and there appeared the Ocklawaha Valley Railroad Company by William Hocker, Attorney and S. P. Hollinrake, Vice-President and General Manager. There also appeared S. J. Hilburn, Attorney for the Palatka Board of Trade; H. M. Hampton, Attorney for the Ocala Board of Trade; E. Gnaun, Bay Lake; W. J. Wilson, G. P. Bernard, A. O. Harper and H. M. Hutchinson, Ft. McCoy; T. I. Arnold, Oak; H. O. Hamm, Palatka; Walter Ray, Ocala, and many other citizens from various points on the line of road of the Ocklawaha Valley Railroad Company. After taking testimony of witnesses and hearing all who desired to be heard, the Commissioners took the said matter under advisement.

And now on this day the said matter coming on for further and final consideration, and the Commissioners being fully advised in the premises, it is considered, order and adjudged by the Railroad Commissioners of the State of Florida, that the application of the
14 Ocklawaha Valley Railroad Company to discontinue service be and the same is hereby denied.

Done and ordered by the Railroad Commissioners of the State of Florida, in open session at their office in the City of Tallahassee, the Capital, this the 16th day of November, A. D. 1917.

(Signed)

R. HUDSON BURR,
Chairman.

STATE OF FLORIDA.
County of Leon:

I, Lewis G. Thompson, Secretary of the Railroad Commission of Florida, hereby certify that the attached paper is a true copy of the original on file in the office of the Railroad Commissioners of Florida, as shown by the records and files of said office.

Witness my hand and seal, this 9th day of May, 1919.

LEWIS G. THOMPSON, [SEAL.]
Secretary Florida Railroad Commission.

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EXHIBIT "C."

In the Circuit Court of the 8th Judicial Circuit of the State of Florida
in and for Putnam County. In Chancery.

THE STATE OF FLORIDA, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, Defendant.

Bill for Injunction.

This cause came on to be heard on the 26th day of November, 1917, at Gainesville, Florida, upon the application of the State of Florida, the complainant, for temporary injunction or restraining order, and the same having been considered upon the bill and answer filed herein, and having been fully argued by Counsel, the Court finds that a temporary restraining order should be issued.

It is, therefore, upon consideration thereof, Ordered, and Adjudged that the Ocklawaha Valley Railroad Company, its Officers, Agents and Employees be, and they are hereby enjoined and restrained from discontinuing the service they are now rendering as a public or common carrier, and are hereby ordered and directed to continue the operation of one mixed train each way daily, except Sunday, over every part of the line of the said Ocklawaha Valley Railroad Company between Ocala and Palatka, until the further order of this Court.

It is further Ordered that the said Ocklawaha Valley Railroad Company, its officers, agents and employees be, and they are hereby enjoined and restrained from taking up or removing any of the
16 rail or track belonging to the said Ocklawaha Valley Railroad Company, or removing or disposing of any part of its rolling stock or other property necessary for the discharge of its duty as a public or common carrier under the statutes of the State of Florida, and the terms of this order, until the further order of this Court.

Done and Ordered at Gainesville, Florida, this 26th day of November, A. D. 1917.

(Signed)

J. T. WILLIS,
Judge.

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendant.

This Cause came on this day to be heard and was argued by Counsel, and thereupon, upon consideration thereof it was ordered, adjudged and decreed as follows:

That the defendant Ocklawaha Valley Railroad Company, a corporation organized and existing under the laws of the State of Florida, pay to the complainant, William S. Hood, as Trustee, within three days from this date the sum of Three Hundred and Thirty-four Thousand, Nine Hundred Seventy-four and 57/100 (\$334,17974.57), with legal interest thereon to be computed from this date until paid, and also the sum of \$12,500.00/100 as a reasonable solicitor's fee for foreclosing said trust deed sued on in this cause, and also to the complainant for his services as Trustee, the sum of \$1,000.00/100, and also all other costs of this suit to be taxed by the Clerk of this Court; that in default of said payments being made as aforesaid, by the said defendant, then in that case the said mortgaged premises mentioned in the said bill of complaint and in said trust deed, to-wit:

The line of railroad extending from the terminus of the Company, in the City of Ocala, a distance of six miles, to a point known as "Silver Springs," in the County of Marion, as described and defined in and subject to the terms of that certain lease and agreement, dated December 14, 1909, between the Seaboard Air Line Railroad Company and the Ocala Northern Railroad Company.

The line of railroad extending from Silver Springs to Fort McCoy, in the County of Marion, a distance of 12.3 miles; from Fort McCoy to the City of Palatka, in Putnam County, a distance of 32.5 miles, passing through the town of Bay Lake and Orange Springs, in Marion County, and passing through Marion County into Putnam County at or near Orange Creek, and thence in Putnam County by way of the towns of Kenwood, Rodman and Kenilworth, to the City of Palatka, and all extensions thereof.

The line of railroad extending from the terminus of the company's line in the City of Palatka, a distance of one and one-half miles, to the terminus of the company's line in the said city of Palatka, leased from the Georgia, Southern & Florida Railway Company.

The right of way of the Company, one hundred feet in width, from Silver Springs to the City of Palatka.

18 All and singular the franchises, rights, privileges and immunities nor or hereafter appendant or appurtenant to or

used in connection with the said lines of the Company and any and all extensions and branches thereof.

Also, that certain lot or parcel of land in Ocala, Florida, in Block 64, Old Survey of the City of Ocala, on which said lot are now located the general offices of the defendant Ocklawaha Valley Railroad Company, which lot or parcel of land is more particularly described in that certain deed of date the 30th day of April, 1915, signed by R. L. Milton as Special Master, as is found of record in the public records of Marion County, Florida, in Deed Book 161, page 357, which said lot is also described in that deed of date November 1st, 1911, signed by E. P. Rentz to the Ocala Northern Railroad Company, as found of record in Deed Book 150 at page 485 of the public records of Marion County, Florida.

Also, all other property included in that certain trust deed made by Ocklawaha Valley Railroad Company to W. S. Hood, Trustee, recorded in the public records of Marion County, Florida, in Mortgage Book 49, at page 1 to 32, and recorded in the public records of Putnam County, Florida, in Mortgage Book 7, at page 182 et seq.;

Also, all of said property or so much thereof as may be sufficient to realize the amount so due the complainant for principal and interest and also the costs of this suit, including solicitor's fees as aforesaid, and the fees, disbursements and commissions on the sale herein mentioned, and all other costs; to be sold on a legal sale day at public auction, at public outcry to the highest and best bidder, in front of the Court House door in the said County of Marion, State of Florida, and at such sale the Master herein appointed is hereby instructed to first offer (1), all the property included herein to be

held, used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, and if as much as \$200,000.00 is bid under such first offering herein provided for, the Master will not offer the same for sale under the second offering herein provided for, otherwise he will immediately thereafter, on the same day and at the same place, (2) offer all of said property for the purpose of and with the privilege on the part of the purchaser of dismantling the same, and that unless the bid received under the second offering herein provided for shall exceed by \$100,000.00 the bid received under the first offering herein provided for, in the event any bid is made under the first offering, then in that event it will be the duty of the said Master to accept the highest bid made under the first offering herein provided for; but if no bid is made under the first offering, or the bid under the second offering herein provided exceeds by \$100,000.00 the bid made under the first offering, then the said Master shall accept the highest bid made under the second offering, and the said Master shall report his doings in this behalf to the Court; That F. R. Hocker be and he is hereby appointed Special Master in Chancery of this Court to execute this decree; that he give public notice of the time and place of sale by previously publishing the same for a space of thirty days in one newspaper published in Marion County, Florida, and in one newspaper published in Putnam County, Florida; that the

Assets Realization Company, a corporation organized and existing under the laws of the State of New Jersey, or any of the parties to this cause, may become the purchaser or purchasers at said sale; that the said Master on such sale being made shall make, execute and deliver a deed to the purchaser of said properties of any portion thereof; that the said Master out of the proceeds of said sale shall retain his fees, disbursements and commissions on said sale; that he pay to the officers of this Court their costs in this suit; that he shall pay all State and county taxes properly assessed against said property or any part of same; that he pay to the complainant's solicitors their fees for foreclosing this trust as herein allowed; that out of the remainder of said proceeds he pay to the complainant Three Hundred Thirty-Four Thousand Nine Hundred Seventy-Four and 57/100 (\$334,974.57) as Trustee for the Assets Realization Company, a corporation organized and existing under the laws of the State of New Jersey, or that such sum be paid to the said Assets Realization Company, together with legal interest thereon from the date of this decree to the date of said sale; or if such remainder shall be insufficient to pay the whole of said amount and interest as aforesaid, then that he apply said remainder to the extent to which it may reach in satisfaction of said amount and interest, and that the said Master take receipts from the respective parties to whom he may have made payments as aforesaid, and file the same together with his report of sale to this Court.

It is further ordered, adjudged and decreed that the said complainant as Trustee as aforesaid, or the said Assets Realization Company in the sale hereunder of the property above mentioned, shall be entitled to use in bidding all or any part of said indebtedness of Three Hundred Thirty-four Thousand, Nine Hundred Seventy-Four and 54/100 (\$334,974.54) Dollars above mentioned, with interest, and have his or its bid credited on said indebtedness, if such bid is accepted, provided that the highest bidder under the second offering provided for in this decree, if his bid exceeds by One Hundred Thousand Dollars the highest bid made under the first offering, or

if no bid is made under the first offering shall be required by the said Master to immediately deposit with the said Master \$10,000 00/100 in cash upon his said bid, to be applied as may be needed in the payment of costs and taxes; provided, also, that in the event the highest bid made under the second offering shall not exceed by One Hundred Thousand Dollars the highest bid made under the first offering, then and in that event the highest bidder under the first offering herein provided for shall immediately deposit with said Master in cash, the full amount of his said bid.

That in case the said property shall sell for more than sufficient to pay the principal, interest, costs and fees of this suit and taxes upon said property, the said Master after making the payments aforesaid as ordered, shall bring such surplus moneys into Court without delay to abide the further order of the Court.

It is further ordered, adjudged and decreed that the defendant and all persons, firms or corporations claiming by through or under it since the commencement of this suit be forever barred and fore-

closed from all equity of redemption, of, in and to said property herein described or any part thereof in the event of sale hereunder.

It is further ordered, adjudged and decreed that upon the execution and delivery of the conveyance or conveyances aforesaid the said purchaser or purchasers, his, her or their representatives or assigns shall be given possession of said property herein described and every portion thereof conveyed to him, her or them, and any purchaser shall be entitled upon the production of the master's deed herein to demand possession of any part of said property included in such deed, and on refusal so to do the persons so refusing will be held and considered in contempt of this Court. The Court reserves the right to reject any or all bids made hereunder.

22

Done and ordered at Chambers at Ocala, Florida, this the 24th day of December, 1917.

W. S. BULLOCK,
Judge.

STATE OF FLORIDA,
County of Leon:

I, G. T. Whitfield, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing pages contain a true and correct copy of the Final Decree entered in the suit of Wm. S. Hood, Trustee, vs. Oklawaha Valley Railroad Company, a corporation, on the 24th day of December, A. D. 1917, as the same appears on pages 1 to 6 of the Transcript of the Record in said case on file and of record in my office at Tallahassee, Florida.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Supreme Court, this ninth day of May, A. D. 1919.

G. T. WHITFIELD,
Clerk Supreme Court, State of Florida.

23

EXHIBIT "E."

In the Circuit Court of the Fifth Judicial Circuit of the State of Florida in and for Marion County. In Chancery.

W. S. HOOD, Trustee,

VS.

OKLAWAHA VALLEY RAILROAD CO.

This cause coming on this day to be heard upon the petition of the Railroad Commissioners of the State of Florida for authority to intervene in said cause for the purpose of aiding and assisting the Court in determining the public's right and interests in the continued operations of the said Oklawaha Valley Railroad as a common carrier, and said cause having been heretofore referred to R. McConathy to determine whether or not said petition should be granted and the said R. McConathy after having given notice to the respective parties in the said cause and their solicitors of record having made

his findings said findings of the said R. McConathy are hereby approved and confirmed.

It is thereupon considered, ordered and adjudged and decreed that the Railroad Commissioners of the State of Florida, in the name of the State of Florida, be and they are hereby authorized to intervene in said cause and to file their bill of intervention presented with their petition for this authority.

Done and ordered at Chambers in the City of Ocala, Florida, this the 27th day of March, 1919.

(Signed)

W. S. BULLOCK, *Judge*.

24 And thereafter to wit, on the 10th day of May, A. D. 1919, upon consideration of said petition and suggestion, the said Supreme Court of Florida did enter an Order in the said cause directing the issue of a rule to show cause, which said Order is in the words and figures as follows, to wit:

In the Supreme Court of Florida, January Term, A. D. 1919, Saturday, May 10, 1919.

THE STATE OF FLORIDA ^{vs.} Rel. RAILROAD COMMISSIONERS OF SAID STATE and VAN C. SWEARINGEN, Attorney General of said State, Plaintiff,

v.

W. S. BULLOCK, Judge of the Fifth Judicial Circuit of Florida, Defendant,

Prohibition.

This matter is this day submitted to the Court upon the petition of the plaintiff herein praying that a writ of prohibition be issued out of this Court, directed to the Circuit Court of the Fifth Judicial Circuit of the State of Florida, and the Honorable W. S. Bullock, Judge of said Court, in accordance with the prayer of said petition; and same having been duly considered, it is ordered by the Court that the Clerk of this Court do this day issue a rule in accordance with the prayer of said petition, directing the said defendant to show cause on Thursday, the 22nd day of May, A. D. 1919, why the writ of prohibition should not be issued as prayed for.

25 And thereafter, to wit, on the 10th day of May, A. D. 1919, there was issued out of the said Supreme Court of the State of Florida a Rule to show cause in words and figures as follows, to wit:

26 In the Supreme Court of Florida, January Term, A. D. 1919,

The State of Florida to the Honorable W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, Greeting:

The Railroad Commissioners of the State of Florida, and Van C. Swearingen, Attorney General of Florida, have filed in this Court their suggestion:

That the Ocklawaha Valley Railroad Company is a railroad corporation organized and existing under the laws of the State of Florida, and enjoying all the rights, privileges and benefits thereof. That it owns a line of railroad from Silver Springs, in the County of Marion, to a point of junction with the Georgia, Southern & Florida Railroad Company, near Palatka, in the County of Putnam, in the State of Florida. The said line so owned being 45½ miles long, more or less. That the charter of the said Railroad Company is still in force and effect, and that the said Railroad Company is obligated to the State of Florida to continue the operation of said railroad, in accordance with the obligations imposed upon it by law upon its acceptance of its charter, and the commencement of operation as a common carrier.

27 That on the 6th day of November, 1917, the said Ocklawaha Valley Railroad Company, by and through S. P. Hollinrake, its Vice-President and General Manager, applied to the Railroad Commissioners of Florida, for permission to discontinue the operation of its trains over its said road. A copy of said application being hereto attached and marked Exhibit "A."

That the said application came on for hearing before the Railroad Commissioners of Florida, in the Court House in the city of Ocala, Florida, on November 14th, 1917, at 2 o'clock in the afternoon. That after hearing in said cause, the said Railroad Commissioners of Florida, by their order entered in the premises, made and entered on the 16th day of November, 1917, denied the petition of the said Ocklawaha Valley Railroad Company to discontinue operation of its trains. A copy of said Order of the Railroad Commissioners in the premises, being hereto attached and marked Exhibit "B."

That thereafter, the Railroad Commissioners were informed and advised that the said Ocklawaha Valley Railroad Company intended to disobey and disregard the order of the Railroad Commissioners in the premises, dated November 16, 1917, and intended to entirely discontinue the operation of its train service over its said railroad, without regard to the order of the Railroad Commissioners in the premises. Accordingly, the Railroad Commissioners applied to the Honorable Jas. T. Wills, Judge of the Circuit Court of the 8th Judicial Circuit in and for Putnam County, for an injunction enjoining and restraining the said Ocklawaha Valley Railroad

28 Company from discontinuing operation as a common carrier. That on November 26, 1917, the Hon. J. T. Wills, upon application of the said Railroad Commissioners, made and entered a restraining order in the premises,—a copy of which order is hereto attached and marked Exhibit "C."

That in disobedience to said order of said Court, the said Ocklawaha Valley Railroad Company did discontinue operation of its trains on or about December 7th, 1917. That thereafter, on or about December 12th, 1917, the Railroad Commissioners of Florida filed in the Circuit Court of Marion County, Florida, an ancillary bill, to carry into effect the order of the Judge of the Eighth Judicial Circuit, made in the premises.

That sometime between November the 26th and December 12th,

1917, W. S. Hood, as Trustee, for the Assets Realization Company, a foreign corporation, filed a bill in the Circuit Court of Marion County, Florida, against the Ocklawaha Valley Railroad Company, to foreclose a trust deed given by the said Ocklawaha Valley Railroad Company to the Assets Realization Company, a foreign corporation, or to a Trustee for its benefit, to secure certain bonded indebtedness of said Ocklawaha Valley Railroad Company, and that upon the application of the complainant made in that suit, S. P. Hollinrake, Vice-President and General Manager of said Railroad Company was appointed receiver of all the properties of said Company. That in and by said bill, the said Hood, Trustee, prayed for an order of the Court in the premises, authorizing the sale of all the property of said Ocklawaha Valley Railroad Company, either
29 as a common carrier, or as junk, depending upon the most favorable offer made for the purchase of said property at the foreclosure sale thereof.

That on December 24th, 1917, Hon. W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit, in and for Marion County, Florida, made and entered his decree in said cause, authorizing the sale of all the property of the said Ocklawaha Valley Railroad Company in the alternative, said property first to be offered for sale as a common carrier, and if as much as \$200,000.00 should be bid under the first offering, the Master should not offer said property for sale as junk, as provided for under the second offering—but providing that should said property not bring said amount, or should the bid under the second offering exceed the bid under the first offering by \$100,000.00, the property should be sold by said Master as junk. A copy of the decree of said Court being hereto attached and marked Exhibit "D."

That thereafter, the application of the Railroad Commissioners, for the appointment of a receiver asked for in their bill of complaint filed in the Circuit Court of Marion County, Florida, to aid the said Railroad Commissioners in carrying out the provisions of the decree of the Circuit Court of Putnam County, Florida, came on for hearing before the Honorable W. S. Bullock, and by certain orders made by him on January 11th, 19th and 22nd, S. P. Hollinrake was removed as Receiver, in the suit of Hood, Trustee, vs. Ocklawaha Valley Railroad Company, and H. S. Cummings was appointed

30 Receiver in said cause, with authority to operate the Ocklawaha Valley Railroad Company, as the Court's receiver in the premises. The order of sale decreed by the Court in its decree of December 24th, 1917, was continued until the further order of the Court in the premises. That the said H. S. Cummings is still operating said Ocklawaha Valley Railroad Company as receiver of the Court, upon authority of the Court in the premises.

That prior to the appointment of said last named receiver, application was made on the part of the Railroad Commissioners in the suit of Hood, Trustee, vs. Ocklawaha Valley Railroad Company, to consolidate with said suit, the suit of the State of Florida, brought by the Railroad Commissioners of Florida, in the Circuit Court of Marion County, Florida, and that while no order was made by the Court consolidating the said suits, by agreement of Counsel for the

respective parties, said suits were considered jointly by the Court in making its orders appointing H. S. Cummings, Receiver, but that thereafter, upon an application made by respondents in the suit brought by the Railroad Commissioners, in the name of the State of Florida, that suit was dismissed by the Court.

That in pursuance of a subsequent order of the Court made in the premises, the Master appointed by the Court in its decree of December 24, 1917, advertised the property and franchise of said Railroad Company decreed to be sold in said decree, for sale on Monday, February 4th, 1919, in accordance with the terms of the decree of the Court made on December 24th, 1917, and that said Master did, on February 4th, 1919, sell said property. That at said

31 sale, the Assets Realization Company, holders of the bonds, for whose benefit said suit was brought, became the purchaser of said property, and all rights, titles and interests of said Railroad Company under the second alternative of said decree, which second alternative relieves the purchaser at said sale from operating said property as a carrier, and authorizes the dismantling and junking of said carrier's property.

That from time to time, the Railroad Commissioners of Florida, applied to the Court for authority to intervene in the suit of Hood, Trustee, vs. Ocklawaha Valley Railroad Company, for the purpose of representing the State in the interest of its citizens, and the right of the State to compel the continued operation of said railroad company as a carrier; and that it was denied the right to intervene prior to March 27th, 1919—when on said date, by an Order of the Court made in the premises, the State of Florida through the Railroad Commissioners of Florida, was authorized to intervene in said cause. A copy of said Order being hereto attached and marked Exhibit "E."

The petition of intervention filed in said cause, among other things, suggested to the Court, that the Court was without authority to decree the sale of said carrier's property as junk, and was without authority to permit the said carrier to discontinue operation, or to relieve it of its obligations to the State of Florida, in a foreclosure proceeding brought to enforce a lien; and suggested further that by law the Railroad Commissioners of Florida, had been empowered with authority and jurisdiction over question of
32 operation and train service of carriers, and that the Court was without jurisdiction to hear, consider or determine said question, without application first being made to the Railroad Commissioners of Florida.

Whereupon, the Court referred said Cause to a Master to determine, among other things, the jurisdiction of the Court upon application of a creditor, to authorize the sale of the property of a common carrier as junk. And that if the Court had jurisdiction, did the facts in the suit before the Court, warrant the sale of said property as junk, and should the sale made on February 4th, 1919, be approved. The said Master decided that the Court had jurisdiction, and that the facts in said cause, warrant the sale of said property as junk, and that the sale should be approved.

The report of the Master came on for hearing before the Court upon exceptions taken thereto, and the Judge of said Court has concurred in the findings of said Master, and has announced he will enter an order in said cause, confirming the sale of said property as junk, thereby permitting the railroad to discontinue operation as a common carrier, to have its road bed dismantled, torn up and removed, and its obligation to the State of Florida avoided, of which privilege the purchaser will immediately avail itself.

It is further suggested to the Court, that the Judge of the Circuit Court of the Fifth Judicial Circuit, is without jurisdiction in said suit, to pass on and determine the right of said Railroad Company to discontinue operation of train services, since such question has been by law, placed under the jurisdiction of the Railroad Commissioners of Florida. It is further suggested that should

said Court have such power and jurisdiction, it is without jurisdiction in that suit, that being merely a suit by a creditor of said carrier, to enforce a lien given by statute. That it — not a suit to marshal assets, or to distribute the property of an insolvent corporation. Adequate remedy by appeal is not afforded petitioners in said cause.

It is further suggested to the Court, that the Assets Realization Company, the purchaser of said carrier's property at said foreclosure under the second alternative of said decree, entered into a contract with R. C. Hoffman & Company, incorporated, prior to the entry of the decree of foreclosure of December 24th, 1917, said contract being of date of December 19th, 1917, for the sale of the rails and other property of said Railroad Company, as junk, agreeing by said contract to dismantle, take up and deliver at Palatka, Florida, the rails of said Railroad Company. A copy of said contract is not in the possession of your petitioners.

Your petitioners further suggest to this Honorable Court, that that part of the decree of the Court of the Fifth Judicial Circuit, entered by the Honorable W. S. Bullock, on the 24th day of December, 1917, in the suit of W. S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, which authorized the sale of said property in the second alternative, was and is void, and that the Court was and is without power, authority or jurisdiction to make such decree in the premises, or to approve the sale of said property so made under said void decree. But notwithstanding, said Court was, and is without power, authority or jurisdiction to decree the sale of said railroad property as junk, to permit its roadbed to be dismantled, torn up and removed, and its obligation to the State of Florida, to continue operation as a common carrier avoided, and is without jurisdiction to approve said

34 sale so made; the said Court is proceeding to continue to hear said cause, and the application of the complainant for a confirmation of said sale, and has announced that on May 12th, 1919, he will enter his order in said cause, confirming said sale.

Petitioners further show that the said W. S. Hood, Trustee, and the Assets Realization Company, are non residents of the State of Florida, residing as your petitioners are informed, and believe, in the City of New York, and State of New York, and that they are at pres-

ent outside of the limits of the State of Florida, but that their attorneys of record in said cause, are the firm of Hocker & Martin, of Ocala, Florida.

And the said petitioners pray that the State's writ of prohibition may be granted in this behalf, to prohibit the said Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Marion County, and you, the said W. S. Bullock, Judge of said Court, from approving or confirming the sale of said carrier's property for junk to be dismantled, and from authorizing or decreeing the dismantling, taking up, or removing any of the rails or track of said carrier, or from exercising any further jurisdiction in said cause relating to the junking or dismantling of the said property.

You, the said W. S. Bullock, Judge as aforesaid, are therefore commanded that you show cause on Thursday, the 22nd day of May next, at 10 O'clock A. M., why the writ of prohibition should not issue as prayed for.

Witness, the Honorable Jefferson B. Browne, Chief Justice of the Supreme Court of the State of Florida, and the *sec'* of said Court at Tallahassee, the Capital, this the 16th day of May, A. D. 1919.

G. T. WHITEFIELD,

Clerk Supreme C. of Florida.

35

EXHIBIT "A."

Ocklawaha Valley Railroad Company.

Ocala, Florida, November 6, 1917.

To the Honorable Railroad Commission,
Tallahassee, Fla.

GENTLEMEN:

The war has brought about a crisis in the affairs of the Ocklawaha Valley Railroad Company and we are therefore positioning your honorable body for permission to discontinue the operation of our trains at the earliest possible moment, certainly not later than midnight of November 30th, 1917.

The Ocklawaha Valley Railroad Company, since its organization in April, 1915, has never been able to earn the expenses of the operation of its property, and this condition has grown worse from month to month, until now the burden is too great to be borne any longer.

Everything that goes into the maintenance and operation of a railroad has increased from 30% to 450%, within the past twenty-four months, as you gentlemen undoubtedly know, and with its small earning capacity, you will readily see that the operation of this road cannot be continued under these conditions.

We trust, therefore, that you will give a favorable reply to this request at an early date.

OCKLAHA VALLEY RAILROAD CO.,

By S. P. HOLLINRAKE,

Vice-Pres't & Gen. M'gr.

STATE OF FLORIDA,
County of Leon:

I, Lewis G. Thompson, Secretary of the Railroad Commission of Florida, hereby certify that the attached paper is a true copy of the original on file in the office of the Railroad Commissioners of Florida, as shown by the records and files of said office.

Witness my hand and seal this 9th day of May, 1919.

LEWIS G. THOMPSON, [SEAL.]
Secretary, Florida Railroad Commission.

36 EXHIBIT "B."

Order No. 576.

File No. 3956.

Before the Railroad Commissioners of the State of Florida.

In the Matter of the Application of the OKLAHAWA VALLEY RAILROAD COMPANY to Discontinue Operation.

Pursuant to Notice No. 162, dated the 12th day of November, 1917, this matter came on for hearing before the Railroad Commissioners of the State of Florida, in the Court House in Ocala, Florida, November 14th, 1917, at 2 o'clock in the afternoon, and then and there appeared the Oklawaha Valley Railroad Company by William Hocker, Attorney and S. P. Hollinrake, Vice-President and General Manager. There also appeared S. J. Hilburn, Attorney for the Palatka Board of Trade; H. M. Hampton, Attorney for the Ocala Board of Trade; E. Guinn, Bay Lake; W. J. Wilson, G. P. Bernard, A. O. Harper and H. M. Hutchinson, Ft. McCoy; T. I. Arnold, Oak; H. O. Hamm, Palatka; Walter Ray, Ocala, and many other citizens from various points on the line of road of the Oklawaha Valley Railroad Company. After taking testimony of witnesses and hearing all who desired to be heard, the Commissioners took the said matter under advisement.

And now on this day the said matter coming on for further and final consideration, and the Commissioners being fully advised in the premises, it is Considered, Ordered and Adjudged by the Railroad Commissioners of the State of Florida, that the application of the Oklawaha Valley Railroad Company to discontinue service be and the same is hereby denied.

Done and Ordered by the Railroad Commissioners of the State of Florida, in open session at their office in the city of Tallahassee, the Capital, this the 16th day of November, A. D. 1917.

(Signed)

R. HUDSON BURN,
Chairman.

STATE OF FLORIDA.

County of Leon:

I, Lewis G. Thompson, Secretary of the Railroad Commission of Florida, hereby certify that the attached paper is a true copy of the original on file in the office of the Railroad Commissioners of Florida, as shown by the records and files of said office.

Witness my hand and seal, this 9th day of May, 1919.

LEWIS G. THOMPSON. [SEAL.]
Secretary Florida Railroad Commission.

38

EXHIBIT "C."

In the Circuit Court of the 8th Judicial Circuit of the State of Florida
 in and for Putnam County. In Chancery.

THE STATE OF FLORIDA, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, Defendant.

Bill for Injunction.

This cause came on to be heard on the 26th day of November, 1917, at Gainesville, Florida, upon the application of the State of Florida, the complainant, for temporary injunction or restraining order, and the same having been considered upon the bill and answer filed herein, and having been fully argued by Counsel, the Court finds that a temporary restraining order should be issued.

It is, therefore, upon consideration thereof, Ordered, and Adjudged that the Ocklawaha Valley Railroad Company, its Officers, Agents and Employees be, and they are hereby enjoined and restrained from discontinuing the service they are now rendering as a public or common carrier, and are hereby ordered and directed to continue the operation of one ~~one~~ ^{one} train each way daily, except Sunday, over every part of the ~~line~~ ^{road} of the said Ocklawaha Valley Railroad Company between Ocala and Palatka, until the further order of this Court.

It is further Ordered that the said Ocklawaha Valley Railroad Company, its officers, agents and employees, and they are hereby enjoined and restrained from taking up or removing any of the rail or track belonging to the said Ocklawaha Valley Railroad
 39 Company, or removing or disposing of any part of its rolling stock or other property necessary for the discharge of its duty as a public or common carrier under the statutes of the State of Florida, and the terms of this order, until the further order of this Court.

Done and Ordered at Gainesville, Florida, this 26th day of November, A. D. 1917.

(Signed)

J. T. WILLIS,

Judge.

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendant.

This Cause came on this day to be heard and was argued by Counsel, and thereupon, upon consideration thereof it was ordered, adjudged and decreed as follows:

That the defendant Ocklawaha Valley Railroad Company a corporation organized and existing under the laws of the State of Florida, pay to the complainant, William S. Hood, as Trustee, within three days from this date the sum of Three Hundred Thirty-four Thousand, Nine Hundred Seventy-four and 57/100 (\$334,974.57), with legal interest thereon to be computed from this date until paid, and also the sum of \$12,500.00/100 as a reasonable solicitor's fee for foreclosing said trust deed sued on in this cause, and also to the complainant for his services as Trustee, the sum of \$1,000.00/100, and also all other costs of this suit to be taxed by the Clerk of this Court; that in default of said payments being made as aforesaid, by the said defendant, then in that case the said mortgaged premises mentioned in the said bill of complaint and in said trust deed to-wit:

The line of railroad extending from the terminus of the Company, in the City of Ocala, a distance of six miles, to a point known as "Silver Springs", in the County of Marion, as described and defined in and subject to the terms of that certain lease and agreement, dated December 14, 1909, between the Seaboard Air Line Railroad Company and the Ocala Northern Railroad Company.

The line of railroad extending from Silver Springs to Fort McCoy, in the County of Marion, a distance of 12.3 miles; from Fort McCoy to the City of Palatka, in Putnam County, a distance of 32.5 miles, passing through the town of Bay Lake and Orange Springs, in Marion County, and passing through Marion County into Putnam County at or near Orange Creek, and thence in Putnam County by way of the towns of Kenwood, Rodman and Kenilworth, to the City of Palatka, and all extensions thereof.

The line of railroad extending from the terminus of the company's line in the City of Palatka, a distance of one and one-half miles, to the terminus of the company's line in the said city of Palatka, leased from the Georgia, Southern & Florida Railway Company.

The right of way of the Company, one hundred feet in width, from Silver Springs to the City of Palatka.

41 All and singular the franchises, rights, privileges and immunities nor or hereafter appendant or appurtenant to or used in connection with the said lines of the Company and any and all extensions and branches thereof.

Also, that certain lot or parcel of land in Ocala, Florida, in Block 64, Old Survey of the City of Ocala, on which said lot are now located the general offices of the defendant Ocklawaha Valley Railroad Company, which lot or parcel of land is more particularly described in that certain deed of date the 30th day of April, 1915, signed by R. L. Milton as Special Master, as is found of record in the public records of Marion County, Florida, in Deed Book 161, page 357, which said lot is also described in that deed of date November 1st, 1911, signed by E. P. Rentz to the Ocala Northern Railroad Company, as found of record in Deed Book 150 at page 485 of the public records of Marion County, Florida.

Also, all other property included in that certain trust deed made by Ocklawaha Valley Railroad Company to W. S. Hood, Trustee, recorded in the public records of Marion County, Florida, in Mortgage Book 49, at page 1 to 32, and recorded in the public records of Putnam County, Florida, in Mortgage Book 7, at page 182 et seq;

Also, all of said property or so much thereof as may be sufficient to realize the amount so due the complainant for principal and interest and also the costs of this suit, including solicitor's fees as aforesaid, and the fees, disbursements and commissions on the sale herein mentioned, and all other costs: to be sold on a legal sale day at public auction, at public outcry to the highest and best bidder, in front of the Court House door in the said County of Marion, State of Florida, and at such sale the Master herein appointed is hereby instructed to first offer (1), all the property included herein to be

42 held, used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, and if as much as \$200,000.00 is bid under such first offering

herein provided for, the Master will not offer the same for sale under the second offering herein provided for, otherwise he will immediately thereafter, on the same day and at the same place, (2) offer all of said property for the purpose of and with the privilege on the part of the purchaser of dismantling the same, and that unless the bid received under the second offering herein provided for shall exceed by \$100,000.00 the bid received under the first offering herein provided for, in the event any bid is made under the first offering, then in that event it will be the duty of the said Master to accept the highest bid made under the first offering herein provided for; but if no bid is made under the first offering, or the bid under the second offering herein provided exceeds by \$100,000.00 the bid made under the first offering, then the said Master shall accept the highest bid made under the second offering, and the said Master shall report his doings in this behalf to the Court; That F. R. Hoeker be and he is hereby appointed Special Master in Chancery of this Court to execute this decree; that he give public notice of the time and place of sale by previously publishing the same for a space of thirty days in one newspaper published in Marion County, Flor-

ida, and in one newspaper published in Putnam County, Florida; that the Assets Realization Company, a corporation organized and existing under the laws of the State of New Jersey, or any of the parties to this cause, may become the purchaser or purchasers at said sale; that the said Master on such sale being made shall make, execute and deliver a deed to the purchaser of said properties of any portion thereof; that the said Master out of the proceeds of said sale

shall retain his fees, disbursements and commissions on said sale; that he pay to the officers of this Court their costs in this suit; that he shall pay all State and county taxes properly assessed against said property or any part of same; that he pay to the complainant's solicitors their fees for foreclosing this trust as herein allowed; that out of the remainder of said proceeds he pay to the complainant Three Hundred Thirty-Four Thousand Nine Hundred Seventy-Four and 57/100 (\$334,974.57) as Trustee for the Assets Realization Company, a corporation organized and existing under the laws of the State of New Jersey, or that such sum be paid to the said Assets Realization Company, together with legal interest thereon from the date of this decree to the date of said sale; or if such remainder shall be insufficient to pay the whole of said amount and interest as aforesaid, then that he apply said remainder to the extent to which it may reach in satisfaction of said amount and interest, and that the said Master take receipts from the respective parties to whom he may have made payments as aforesaid, and file the same together with his report of sale to this Court.

It is further ordered, adjudged and decreed that the said complainant as Trustee as aforesaid, or the said Assets Realization Company in the sale hereunder of the property above mentioned, shall be entitled to use in bidding all or any part of said indebtedness of Three Hundred Thirty-four Thousand, Nine Hundred Seventy-Four and 54/100 (\$334,974.54) Dollars above mentioned, with interest, and have his or its bid credited on said indebtedness, if such bid is accepted, provided that the highest bidder under the second offering provided for in this decree, if his bid exceeds by One Hundred Thousand Dollars the highest bid made under the first offering, or if no

bid is made under the first offering shall be required by the said Master to immediately deposit with the said Master \$10,000 00/100 in cash upon his said bid, to be applied as may be needed in the payment of costs and taxes; provided, also, that in the event the highest bid made under the second offering shall not exceed by One Hundred Thousand Dollars the highest bid made under the first offering, then and in that event the highest bidder under the first offering herein provided for shall immediately deposit with said Master in cash, the full amount of his said bid.

That in case the said property shall sell for more than sufficient to pay the principal, interest, costs and fees of this suit and taxes upon said property, the said Master after making the payments aforesaid as ordered, shall bring such surplus moneys into Court without delay to abide the further order of the Court.

It is further ordered, adjudged and decreed that the defendant and all persons, firms or corporations claiming by through or under

it since the commencement of this suit be forever barred and foreclosed from all equity of redemption, of, in and to said property herein described or any part thereof in the event of sale hereunder.

It is further ordered, adjudged and decreed that upon the execution and delivery of the conveyance or conveyances aforesaid the said purchaser or purchasers, his, her or their representatives or assigns shall be given possession of said property herein described and every portion thereof conveyed to him, her or them, and any purchaser shall be entitled upon the production of the master's deed herein to demand possession of any part of said property included in such deed, and on refusal so to do the persons so refusing will be held and considered in contempt of this Court. The Court

45 reserves the right to reject any or all bids made hereunder. Done and ordered at Chambers at Ocala, Florida, this the 24th day of December, 1917.

W. S. BULLOCK,

Judge.

STATE OF FLORIDA,

County of Leon:

I, G. T. Whitfield, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing pages contain a true and correct copy of the Final Decree entered in the suit of Wm. S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, a corporation, on the 24th day of December, A. D. 1917, as the same appears on pages 1 to 6 of the Transcript of the Record in said case on file and of record in my office at Tallahassee, Florida.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Supreme Court, this ninth day of May, A. D. 1919.

G. T. WHITFIELD,

Clerk Supreme Court State of Florida.

46

EXHIBIT "E."

In the Circuit Court of the Fifth Judicial Circuit of the State of Florida in and for Marion County. In Chancery.

W. S. HOOD, Trustee,

vs.

OCKLAHAHA VALLEY RAILROAD CO.

This cause coming on this day to be heard upon the petition of the Railroad Commissioners of the State of Florida for authority to intervene in said cause for the purpose of aiding and assisting the Court in determining the public's right and interests in the continued operations of the said Ocklawaha Valley Railroad as a common carrier, and said cause having been heretofore referred to R. McConathy to determine whether or not said petition should be granted and the said R. McConathy after having given notice to the respective parties

in the said cause and their solicitors of record having made his findings said findings of the said R. McConathy are hereby approved and confirmed.

It is thereupon considered, ordered and adjudged and decreed that the Railroad Commissioners of the State of Florida, in the name of State of Florida, be and they are hereby authorized to intervene in said cause and to file their bill of intervention presented with their petition for this authority.

Done and ordered at Chambers in the City of Ocala, Florida, this the 27th day of March, 1919.

(Signed)

W. S. BULLOCK,

Judge.

47 And thereafter, to-wit, on the 19th day of May, A. D. 1919, there was filed in the said Supreme Court of Florida an acknowledgement of service of the rule to show cause or alternative writ of prohibition, hereinbefore referred to, which said acknowledgement is in the words and figures as follows, to-wit:

48 In the Supreme Court of the State of Florida.

STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS et al.

VS.

W. S. BULLOCK, Circuit Judge.

Service of Alternative Writ of Prohibition, and acknowledgement of copy of same, is made this 12th day of May, A. D. 1919.

W. S. BULLOCK,

Circuit Judge.

49 And thereafter, to-wit, on the 19th day of May, A. D. 1919, counsel for the defendant in said cause filed in the said Supreme Court a motion to require the amendment of the said suggestion for writ of prohibition which motion is in the words and figures as follows, to-wit:

50 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS OF THE State of Florida and Van C. Swearingen, Attorney General of Florida, Plaintiff.

VS.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, Defendant.

Comes now, W. S. Bullock, as Judge aforesaid, defendant in said cause, and shows the Court that the suggestion for writ of prohibition herein is so framed as to prejudice, embarrass and delay a fair trial of this action, and, therefore, moves the Court to enter an

order in this cause requiring the plaintiff to amend such suggestion in the following particulars:

(a). So as to show what were the allegations of the bill filed by the Railroad Commissioners of the State of Florida, in the Circuit Court of the Eighth Judicial Circuit in and for Putnam County, Florida, against the Ocklawaha Valley Railroad Company; what were the issues in said suit, what was the decree of the Court thereon, and the evidence before the Court when the decree was made.

51 (b). Said suggestion should be made to show what were the allegations of the bill filed by the Railroad Commissioners of the State of Florida, in the Circuit Court of Marion County, Florida, against the Ocklawaha Valley Railroad Company, and what were the issues in said cause.

(c). Said suggestion should state the material allegations of the bill of complaint in the cause of William S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, the names of the defendants to such proceedings; the issues made therein and the decision of the court on such issues, if any.

(d). The suggestion should show what were the allegations of the several petitions for intervention filed by the State in the cause of Wm. S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, pending in the Circuit Court of Marion County, Florida, in chancery; when such petitions were presented to the court and what action was taken thereon.

For grounds of this motion this defendant states:

1st. The suggestion does not fully show all of the matters and facts which appear upon the face of the proceedings in the Circuit Court, nor is the same accompanied by the transcript of the record of said proceedings, duly certified.

2nd. The said suggestion is so framed as to prejudice, embarrass and delay a fair trial of this action, in that the suggestion does not show fully what proceedings were had in the inferior court, what where the issues involved, nor who were the parties thereto, which defects in suggestion will make it necessary for this defendant to show such facts by way of plea or answer, and evidence in support thereof; whereas, if such suggestion were amended in the particulars indicated, showing such facts as are wholly apparent on the face of the proceedings in the inferior court, all questions in the case would be disposed of by this court at once on demurrer to the suggestion.

52 3d. The petition is so framed as to prejudice and embarrass this defendant in a fair trial of this action, because the suggestion does not state the proceedings in the inferior court, as required by statute, nor is such suggestion accompanied by a transcript of the record of such proceedings duly certified, which defects in such suggestion will necessitate this defendant incurring great expense

and labor of setting forth such proceedings by way of plea or answer, and filing in this court a transcript of the record of the inferior court, which record consists of many hundreds of typewritten pages.

HOCKER & MARTIN,

Attorneys for the Defendant.

53 STATE OF FLORIDA,
County of Marion:

Before me, the undersigned authority, personally appeared E. H. Martin, who being by me first duly sworn deposes and says that he is one of the attorneys for the defendant in the above styled cause; that he is familiar with the proceedings had in the case pending in the Circuit Court of the Eighth Judicial Circuit of Florida, in and for Putnam County, in Chancery, in which the Railroad Commissioners of the State of Florida were complainants and the Ocklawaha Valley Railroad Company was defendant, that he is familiar with the proceedings in the suit heretofore pending in the Circuit Court of Marion County, Florida, in Chancery, in which the Railroad Commissioners of the State of Florida were complainants and the Ocklawaha Valley Railroad Company was defendant, and that he is familiar with the proceedings in the suit pending in the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Marion County, Florida, in Chancery, in which Wm. S. Hood is complainant and Ocklawaha Valley Railroad Company is defendant, in which latter suit the Railroad Commission of the State of Florida is intervenor; that affiant knows the contents of the foregoing motion, and that the matters of fact therein alleged are true to the best of his knowledge, information and belief.

E. H. MARTIN.

Sworn to and subscribed before me this the 17th day of May, 1919.

[N. P. SEAL.]

MABEL JOHNSON,

Notary Public.

54 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS OF THE State of Florida, and Van C. Swearingen, Attorney General of Florida, Plaintiff,

vs.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, Defendant.

The plaintiff in said cause and its counsel will please take notice that on the 27th day of May, 1919, at ten o'clock A. M. or as soon thereafter as counsel may be heard, we shall present to the above styled Court, at the Supreme Court Room in Tallahassee, Florida, motion to require the plaintiff in said cause to file in the Supreme

Court certified transcript of the record of the proceedings of the lower court, and motion to require the plaintiff to amend the suggestion in said cause, copies of which motions are hereto attached.

HOCKER & MARTIN,
Attorneys for the Defendant.

55 STATE OF FLORIDA,
County of Marion:

Before the undersigned authority personally came E. H. Martin who being by me first duly sworn deposes and says that he is one of the attorneys for the defendant W. S. Bullock, Judge, etc., in the above styled action, and that on the 17th day of May, 1919, he deposited in the United States mail at Ocala, Florida, true copies of the motion of the said defendant to require a compulsory amendment of the suggestion; motion of the said defendant to require a certified transcript of the record of the lower court to be filed in this cause, and a true copy of notice of hearing of said motions, enclosed in an envelope, securely sealed, postage prepaid, addressed to D. A. De Vane, Esq., Florida Railroad Commission, Tallahassee, Florida; that he likewise on the same day and at the same time and place, deposited true copies of the said papers in the United States mail, securely sealed, postage prepaid, addressed to Hon. Van C. Swearingen, Attorney General, Tallahassee, Florida; that the postoffice address of the gentlemen named is Tallahassee, Florida, and that in due course of mail said papers should have reached their destination on or before the 19th day of May, 1919.

56 Affiant further says that on the 23d day of May, 1919, he deposited in the United States mail at Ocala, Florida, in an envelope securely sealed, postage prepaid, copy of brief of said defendant on the two motions above named, which envelope was addressed to D. A. De Vane, Esq., Florida Railroad Commission, Tallahassee, Florida, and that in due course of mail the said envelope with its enclosure should reach the said Dozier A. De Vane on the 24th day of May, 1919.

E. H. MARTIN.

Sworn to and subscribed before me this the 23d day of May, 1919.
[N. P. SEAL.] MABEL JOHNSON,
Notary Public.

57 And thereafter, to-wit, on the 28th day of May, A. D. 1919, the said Supreme Court did enter its Order granting the said motion to amend, which said Order is in the words and figures as follows, to-wit:

In the Supreme Court of Florida, January Term, A. D. 1919,
Wednesday, May 28, 1919.

This cause is this day submitted to the Court upon motion of counsel for defendant for an order requiring plaintiff herein to amend his suggestion for writ of prohibition in the following particulars:

(a) So as to show what were the allegations of the bill filed by the Railroad Commissioners of the State of Florida in the Circuit Court of the Eighth Judicial Circuit in and for Putnam County, Florida, against the Ocklawaha Valley Railroad Company; what were the issues in said suit, what was the decree of the Court thereon, and the evidence before the Court when the decree was made.

(b) What were the allegations of the bill filed by the Railroad Commissioners of the State of Florida, in the Circuit Court of Marion County, Florida, against the Ocklawaha Valley Railroad Company, and what were the issues in said cause.

(c) So as to show the material allegations of the bill of complaint in the cause of William S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, the names of the defendants to such proceedings, the issues made therein and the decision of the court on such issues, if any.

(d) So as to show what were the allegations of the several petitions for intervention filed by the State in the cause of Wm. S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, pending in the Circuit Court of Marion County, Florida, in chancery; when
58 such petitions were presented to the court and what action was taken thereon.

And said motion having been duly considered, it is ordered and adjudged by the Court that the same be and it is hereby granted.

59 And, on the 19th day of May, A. D. 1919, counsel for the defendant in the said cause filed in the said Supreme Court of Florida a motion to require the plaintiff therein to file in said Supreme Court in this cause duly certified transcript of the record of all the proceedings in the case of Wm. S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, pending in the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Marion County, which said motion is in the words and figures as follows, to-wit:

60 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. THE RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA, and VAN C. SWEARINGEN, Attorney General of Florida, Plaintiff,

VS.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, Defendant.

Comes now W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, defendant in the above styled cause, and moves the court to enter an order herein requiring the plaintiff to file in this court duly certified transcript of the record of all the proceedings in the case of Wm. S. Hood, Trustee, vs. Ock-

Ocklawaha Valley Railroad Company, pending in the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Marion County, as provided for in and by Section 2262 of the General Statutes of Florida, and for grounds of this motion states:

1st. The matters contained in the suggestion for writ of prohibition appear upon the face of the proceedings in the inferior court, but the transcript of the said record did not accompany the said suggestion, as required by said statute.

2nd. Such transcript of record is necessary for the information of this court in deciding the questions presented by such suggestion for writ of prohibition.

3rd. Such transcript of record may disclose material facts not shown in and by the suggestion for said writ.

HOCKER & MARTIN,

Attorneys for the Defendant.

61 And thereafter, to wit, the said Supreme Court did enter its order granting the motion last aforesaid, which said order is in the words and figures as follows, to wit:

In the Supreme Court of Florida, January Term, A. D. 1919, Saturday, May 28, 1919.

This cause is this day submitted to the Court upon the motion of counsel for defendant for an order herein requiring the plaintiff to file in this court duly certified transcript of the record of all the proceedings in the case of Wm. S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, pending in the Circuit Court for Marion County; and same having been duly considered, it is ordered by the Court that the said motion be and it is hereby granted.

62 And, on the 19th day of May, A. D. 1919, counsel for the defendant in the said cause filed in the said Supreme Court of Florida a demurrer to the said suggestion for writ of prohibition, which demurrer is in the words and figures as follows:

63 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA, and VAN C. SWEARINGEN, Attorney General of Florida, Plaintiff,

vs.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, Defendant.

Comes now the defendant, W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, defendant in the above styled cause, and says:

That the suggestion of the plaintiff herein for writ of prohibition

is bad in substance, and this defendant demurs to the said suggestion upon the grounds hereafter stated.

HOCKER & MARTIN,

*Attorneys for the Defendant, W. S. Bullock,
Judge of the Circuit Court of the Fifth
Judicial Circuit of the State of Florida.*

For grounds of demurrer and substantial matters of law intended to be argued, this defendant shows:

1st. It does not appear by said suggestion that the Circuit Court has without jurisdiction of the subject matter or of the parties or that it was attempting to exercise any jurisdiction not conferred by law.

2d. It affirmatively appears by the suggestion that the Circuit Court had jurisdiction to entertain the suit of Wm. S. Hood, Trustee, vs. Oklawaha Valley Railroad Company, to order the sale of the property of the said Railroad Company in the alternative, as shown by the suggestion, and to confirm the sale thereof as the court announced it would do.

3d. It is not shown by such petition for intervention that the plaintiff herein by and through the Railroad Commission of the State of Florida, did not itself seek the judgment of said Circuit Court as to whether or not said Railroad should be dismantled.

4th. It does not appear what were the contents of the petition for intervention filed by the Railroad Commissioners of the State of Florida, in said suit of Wm. S. Hood, Trustee, vs. Oklawaha Valley Railroad Company, nor what relief was sought thereby.

5th. The suggestion shows on its face that the relators have waived their right to question the jurisdiction of the Circuit Court in the premises:—(a), by failing to appeal from the Court's decree dismissing the suit of the State of Florida vs. Oklawaha Valley Railroad Company, referred to in said suggestion; (b), by intervening in the suit of Wm. S. Hood, Trustee, vs. Oklawaha Valley Railroad Company, for the purpose of "aiding and assisting the Court in determining the public's rights and interests in the continued operation of the said Oklawaha Valley Railroad Company as a common carrier," as it appears by exhibit "E" of said suggestion; (c), and by securing the appointment of a receiver by said Circuit Court to operate said railroad.

6th. It does not appear what were the contents of the bill for intervention filed in the Circuit Court of Marion County, Florida, by the plaintiff herein against the Oklawaha Valley Railroad Company, nor what questions were adjudicated in said cause.

7th. It does not appear what were the allegations of the bill of complaint in the cause of Wm. S. Hood, Trustee, vs. Oklawaha Valley Railroad Company, filed in the Circuit Court of Marion County, Florida, in Chancery, what pleadings, if any, were filed to such bill, nor by whom, what were the contents of such pleadings,

nor what questions were considered and adjudicated by the court in said cause.

HOCKER & MARTIN,

Attorneys for the Defendant.

STATE OF FLORIDA,

County of Marion:

Before the undersigned authority personally appeared W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, who being by me first duly sworn deposes and says that he is the defendant in the above styled cause and that the foregoing denurrer is not interposed for the purpose of delay.

W. S. BULLOCK.

Sworn to and subscribed before me this 17th day of May, 1919.

[S. F. SEAL.]

MABEL JOHNSON,

Notary Public.

66 I, E. H. Martin, hereby certify that I am one of the attorneys for the defendant in the above styled cause and that in my opinion the foregoing denurrer is well founded in point of law.

E. H. MARTIN.

67 And thereafter, to-wit, On the 28th day of June, A. D. 1919, counsel for the defendant in said cause filed in said Supreme Court a motion to dismiss the suggestion for writ of prohibition therein, which motion to dismiss is in the words and figures following, to-wit:

68 In the Supreme Court of the State of Florida.

STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS and ATTORNEY GENERAL, Plaintiff,

VS.

W. S. BULLOCK, Circuit Judge, etc., Defendant.

Comes now the defendant in said cause and moves the Court to dismiss the same, the grounds for this motion being:

1st. The rule in this cause was not directed to the plaintiff in the suit of Wm. S. Hood, Trustee, vs. Oklawaha Valley Railroad Company, et al., as required by Section 2263, General Statutes of Florida.

2nd. Such rule was not served upon Wm. S. Hood, Trustee, the Plaintiff in the lower court, as required by Section 2263, General Statutes of Florida.

3rd. This rule was not served on the attorneys for Wm. S. Hood, Trustee, plaintiff in the lower court, as required by Section 2264, General Statutes of Florida.

4th. On the 27th day of May, 1919, this court entered an order in this cause requiring the plaintiff to file in this court a duly certified transcript of the record of all proceedings in the case of William S. Hood, Trustee, vs. Oklawaha Valley Railroad Company, et al., pending in the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Marion County, in Chancery, as provided for in and by Section 2262 of the General Statutes of Florida, but the plaintiff has not complied with said order of this Honorable Court and has not filed any transcript of record in this court as directed.

5th. This Court on the 27th day of May, 1919, entered an order herein requiring the plaintiff to amend its suggestion for prohibition in certain particulars pointed out in said order, but such order has not in any sense been complied with and no amendment of such suggestion has been filed in this court.

Wherefore, defendant moves the Court to dismiss said cause.

HOCKER & MARTIN,

RUSHMORE, BISBEE AND STERN,

Attorneys for the Defendant.

W. S. Bullock, Judge, etc.

And thereafter, to-wit, On the 7th of July, A. D. 1919, counsel for the petitioners in said cause filed in said Supreme Court a motion to make certain designated transcripts a part of the record of said cause, and to make one W. S. Hood, as Trustee, a party defendant in said cause, which said motion is in the words and figures as follows, to-wit:

In the Supreme Court of the State of Florida.

STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS, and ATTORNEY GENERAL,

VS.

W. S. BULLOCK, Circuit Judge.

Prohibition.

Now comes the petitioners in the above entitled cause, and in compliance with the order of the Court heretofore made in said cause, files a transcript of the proceedings in the following cases:

W. S. Hood, Trustee, Complainant, vs. Oklawaha Valley Company, a corporation, defendant. Pending in Marion County, Florida.

State of Florida, complainant, vs. Oklawaha Valley Railroad Company, Defendant. Pending in Marion County, Florida.

State of Florida, complainant, vs. Oklawaha Valley Railroad Company, a corporation, Defendant, Pending in Putnam County, Florida.

And your petitioners move the Court for an order making said records a part of the record and exhibit to the petition for a writ of prohibition in the above entitled cause.

Your petitioners further move the Court that the rule heretofore issued directed to W. S. Bullock, Circuit Judge, be amended to include as a party defendant, W. S. Hood, as Trustee, the complainant in the suit in Marion County, Florida.

And your petitioners will ever pray.

DOZIER A. DE VANE,

Attorney for Petitioners.

72 And thereafter, to-wit, on the 22nd day of July, A. D. 1919, the said Supreme Court did enter its Order granting the motion herein last above mentioned, which Order is in the words and figures, as follows, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1919, Tuesday, July 22, 1919.

This cause is this day submitted to the Court upon motion of counsel for plaintiff herein for an order making a part of the record and exhibits to the petition for a writ of prohibition herein transcripts of the proceedings in the cases of:

(a) W. S. Hood, Trustee, Complainant, v. Ocklawaha Valley Railroad Company, a corporation, defendant, pending in Marion County Circuit Court;

(b) State of Florida, complainant, v. Ocklawaha Valley Railroad Company, defendant, pending in Marion County Circuit Court; and

(c) State of Florida, complainant, v. Ocklawaha Valley Railroad, a corporation defendant, pending in Putnam County Circuit Court.

And also upon motion of counsel for plaintiff that the rule heretofore issued in this cause be amended to include as a party defendant W. S. Hood, as Trustee, the complainant in the suit in Marion County, Florida.

And same having been duly considered, it is ordered by the Court that the said motion be and it is hereby granted.

73 The several transcripts filed in the Supreme Court of Florida in said cause, in pursuance of the motion and order granting said motion herein last referred to, are as follows:

74 & 75 Transcript of Record of Proceedings in the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Marion County, in Chancery, in the suit of

WILLIAM S. HOOD, as Trustee, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendant,

therein lately pending.

On December 10th, 1917, the complainant filed the following bill of foreclosure:

76 To the Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Marion County, in Chancery Sitting:

William S. Hood, of the Township of Mantua, County of Gloucester, State of New Jersey, as Trustee, brings this his bill of complaint against Ocklawaha Valley Railroad Company, a corporation organized and existing under the laws of the State of Florida, and thereupon your orator complains and says:

First, That in the month of December, 1909, a railroad company was duly chartered under the general laws of the State of Florida, under the name of the Ocala Northern Railroad Company, to construct and operate a railroad for the transportation as a common carrier of goods and passengers for hire from the City of Ocala, Florida to the City of Jacksonville, Florida, and that pursuant to such charter a railroad was thereafter completed and brought into operation from Silver Springs, Florida to a point near Palatka, Florida, and through an arrangement with the Seaboard Air Line Railway at Ocala, Florida, and the Atlantic Coast Line Railroad Company at Palatka, Florida, the said Ocala Northern Railroad was able to operate its trains as a common carrier of goods and passengers from Ocala to Palatka, Florida, for several years, namely from about December 1st, 1909, to about the end of the year 1913, and that said Ocala Northern Railroad Company and its predecessors in interest had expended about \$500,000 in the construction of the said line of railroad from Silver Springs to a point near Palatka, Florida; that the said Ocala Northern Railroad was heavily indebted, and in order to secure its obligation due prior to 1913, issued and sold certain bonds in a large sum of money which was secured by a trust deed upon the said properties owned by the said Ocala Northern Railroad Company, and that except for a short interval of time the said line of railroad so operated as a common carrier was

77 never able to earn a sufficient sum of money to pay the cost of operating the same, and was never at any time able to earn a sufficient sum of money to pay the interest upon the bonded indebtedness issued against the same by the said Ocala Northern

Railroad Company; and that thereafter about 1913, the said trust deed so made by the Ocala Northern Railroad Company was fore-closed, and pending such foreclosure the same passed into the hands of a receiver, in whose hands the said railroad remained from the early part of the year 1913 to about April, 1915, and during the said interval the said railroad was operated by the said receiver as a common carrier, but that the said receiver so operating the same was never able to make the said railroad pay operating expenses, and during the period of such receivership several thousands of dollars were lost in operating said road. That thereafter, about April, 1915, upon the termination of such foreclosure proceedings against the said Ocala Northern Railroad Company, the defendant Ocklawaha Valley Railroad Company was organized under the general laws of the State of Florida relating to railroads for the purpose of taking over and operating said line of railroad above mentioned, and that in order to secure the purchase price of said line of railroad, and for the other purposes expressed in exhibit A hereto attached, the said Ocklawaha Valley Railroad Company, on the first day of July, 1915, duly executed and delivered to your orator a trust deed, a copy of which trust deed is hereto attached marked exhibit A, and made a part hereof, and reference to same is prayed as often as may be necessary.

That all of the proceedings and resolutions of the directors meetings and stockholders, whereunder the execution of exhibit A was authorized, were duly had and done as set forth and expressed in said exhibit A, and that after the execution and delivery of said exhibit A by the said defendant, the said defendant duly presented to your orator for validation its temporary bond number one for \$300,000, of date July 1st, 1915, issued under the terms of said exhibit A, executed by the said defendant to your orator as trustee, which said temporary bond in the sum of \$300,000 was due and payable on the 1 day of —, 19—, and drew interest at the rate of 5 per cent. per annum, payable semi-annually, and the said temporary bond was duly certified and indorsed by your orator as trustee aforesaid, and was thereupon by the said defendant duly delivered to Assets Realization Company, a corporation organized and existing under the laws of the State of Illinois, to secure the said Assets Realization Company in the payment of the sum of \$258,601.51, with interest thereon at the rate of six per cent. per annum, which said sum last mentioned represented the cost to the said Assets Realization Company of the said line of railroad hereinbefore described. That since the 15th day of April, 1915, the defendant in this cause has operated as a common carrier the line of railroad hereinbefore mentioned, but that at no time since the 15th day of April, 1915, has the said line of railroad ever been able to earn enough to pay operating expenses, and that on the contrary the said line of railroad has lost the sum of \$35,531.51 in operating between said dates as appears by exhibit B hereto attached and made a part hereof. That the said defendant has never been able to pay any part of its said indebtedness to said Assets Realization Company, or any part of the interest upon said indebtedness, and that the said \$300,000 temporary bond so

issued as aforesaid, together with all the interest thereon remains wholly due and unpaid, and the same has been presented to your orator by the said Assets Realization Company, and payment thereof demanded, and pursuant to the written request of said Assets Realization Company, your orator has, by notice in writing, mailed by registered mail to said defendant, at 43 Exchange place, New York

City, in the Borough of Manhattan, declared the principal
79 of said bond due and payable forthwith, and that pursuant to the demand of said Assets Realization Company this suit is brought for the purpose of enforcing payment of said \$300,000 temporary bond, with interest thereon from date thereof at the rate of 5 per cent. per annum, and that there are no other, or additional bond or bonds issued by and under the terms of said exhibit A, or secured by its provisions, and that the said \$300,000 temporary bond held by the said Assets Realization Company is the only indebtedness entitled to participate in the security afforded by the terms of said exhibit A. That the said line of railroad as described in said exhibit A, was operated by the defendant for a short time after the 31st of October, 1917, and during such interval the said defendant continued to lose money through the operation of the said road until the said defendant was left without further means and the operation of said road ceased.

Second. That the original cost of said road as hereinbefore stated, was about \$500,000, and that said defendant at no time ever paid any interest upon any part of such cost and only for a short interval was it ever able to pay even the operating expenses, and that the said road was sold to the defendant at about half of what it originally cost, and yet the said road has never been able to earn enough money to pay any interest upon such reduced purchase price, and on the contrary, has never been able to earn expenses as hereinbefore set forth.

Third. That your orator is advised that the track of said railroad is in a dangerous condition, and that the immediate expenditure of a large sum of money will be necessary to render said track safe for the conveyance of trains, and that your orator is also advised that the said defendant is without adequate rolling stock, to maintain
80 regular train service upon said line of railroad; that the said defendant owns three locomotives known as engine number 109, engine No. 110, and engine No. 112, all of which locomotives are old and badly in need of repairs, and several months' time would be required, and the expenditure of a large sum of money upon said locomotives, in order to get same in condition to perform regular train service. That the said defendant owns the following coaches: Coach Number 101, Coach No. 102, Coach No. 100, coach No. 103, coach No. 104, coach No. 107, and B/C coach 105—all of which coaches are badly in need of repairs, some of which coaches are entirely out of use. That on the day of the execution of exhibit A hereto the said defendant, owned, and had its general offices upon a certain piece of land in the City of Ocala in Block 64, Old Survey of the City of Ocala, which said piece of land or lot was acquired by said defendant under deed dated the 30th day of April 1915, signed by R. L. Milton, as Special Master, as is found of record in the public

records of Marion County, Florida, in deed book 161, at page 357, and which said lot is also described in that certain deed of date November 1st, 1911, signed by E. P. Rentz and wife Kate W. Rentz, to the Ocala Northern Railroad Company, as found of record in deed book 150, at page 485, of the public records of Marion County, Florida, which said lot above described, as well as the locomotives and coaches above mentioned, and all other property owned by the said defendant at the time of the execution of said exhibit A, or subsequently acquired by it, was intended to be included in and conveyed by the terms of said trust deed to your orator.

Fourth. That owing to the present demand for labor and materials it is wholly impracticable to undertake the operation of said railroad, and that in fact it would probably be well nigh impossible to buy, at any reasonable figure, or to rent, a locomotive or locomotives suitable for operating upon the line of defendant's road, if in fact such locomotives could be procured at all, and that even if
81 such locomotives could be procured at all, it would be dangerous to operate trains over the said line of road, unless some \$20,000 to \$25,000 were expended immediately upon the said road in replacing cross-ties, bridges and trestles, and that even if all this were done that there is no prospect that any sufficient amount of traffic would be offered to defendant railroad to pay the necessary daily operating expenses, as the said road has never paid such operating expenses since the year 1909, except perhaps for a very short interval, when the logging and timber industry in the territory served by the defendant's line was at its height, about the year 1910, since which time practically all of the timber has been cut from said territory.

Fifth. That your orator is advised and believes that there are no debts or claims held against the defendant company for materials, labor, or supplies, other than the claim secured by the said exhibit A as hereinbefore mentioned, and other than some \$35,000 or \$40,000 additional money which the said defendant persuaded the said Assets Realization Company to advance for the purpose of keeping the said road in operation, and to cover a deficit in operation since April 1915.

Sixth. That the said railroad was never constructed, as originally contemplated, from Ocala to Jacksonville, Florida, nor was the same in fact ever constructed from Ocala to Palatka, but only from Silver Springs Florida to a point near Palatka, and that the same has now become totally insolvent, and that the value of all of the property owned by the said defendant is very much less than its present indebtedness, and that including the interest of six per cent upon the
cost of said road, the defendant has lost nearly \$80,000 since
82 April, 1915, in the operation of said road, upon a total cost of only about \$260,000, and that the above ratio of shrinkage, the expenses of operation, and taxes, etc., will absorb the entire investment within a few years, and that even if \$25,000 to \$30,000 were expended in track betterments and a large sum of money spent on engines and rolling stock, still the said road would be worth little, if anything, more than at present, because railroad properties are

sold upon the basis of their present earnings or prospective earnings, and there is no prospect for any substantial increase in the earnings of the defendant.

Seventh. That your orator is advised that a claim for something over \$6,000 for taxes for the year 1917 is asserted against the property of the defendant by the Comptroller of the State of Florida, but as to the validity of such claim your orator is not advised, but that there is no possible way for the said defendant to pay any proper claim for taxes, or any of its other debts, through the operation, under any plan, of its said line of road, as your orator is informed and believes, and charges the facts to be.

Eighth. That in and by the terms of the said exhibit A it was, among other things, provided that in the event of foreclosure of the same, the trustee therein named and his solicitors should be paid a reasonable compensation in that behalf to be fixed by the court.

Ninth. For as much therefore as your orator is without relief save in a court of equity, and the premises considered, your orator prays that an account may be taken under the direction of this court of the amount due upon said temporary bond number one, in the sum of \$300,000 as hereinbefore described, together with the interest thereon:

And that upon the taking of such account that the defendant be required to pay the amount so found to be due upon a short
83 day to be fixed by this court; and that the said defendant be required, as well, to pay all costs, attorney's fees, and the compensation to be allowed your orator in this behalf.

And in the event of the failure on the part of the said defendant to pay the said sum so found to be due, that all of the property described in this bill and referred to and included by and under the terms of exhibit A, may be sold to satisfy the amount so found to be due, together with costs as aforesaid.

That in the event of such sale that the decree to be entered by your Honor shall provide for the offering of said property to be operated as a common carrier of goods and passengers, and that the master authorized to make such sale be instructed and empowered to first offer the same for sale for the use aforesaid, and immediately thereafter to also offer the same for the purpose of being dismantled, in order that the court may better determine what is necessary to be done to protect the interests of your orator and those whom he represents; the interests of the State under its claim for taxes, and the public interest.

That upon the coming in of such bids, or any bid, upon either one of the offerings above provided for that the court may enter an order confirming the sale at the highest sum which may be offered under either of the offerings above provided for, or if your orator be mistaken in the belief that he is entitled to such relief, that the said special master be authorized to offer said property burdened with the duties of a common carrier, by notice as required by law, and then after it shall be ascertained what can be realized for same by that method, and if it prove that the highest bid received was wholly inadequate to discharge the amounts of claims secured by said exhibit A, together

84 with the interest and costs, then your orator prays that such sale may be rejected, and that the said property may be ordered resold,—reoffered by said Master after due notice as provided by law, and sold for the purpose and with the privilege of being dismantled, and in the event the price so offered for the said property with the dismantling privilege shall exceed that offered for it as a common carrier then that the said property may be sold to the highest and best bidder with the dismantling privilege.

That your orator may have such other and further relief as equity may require and unto the court may seem meet; that a receiver may be appointed to take charge of and care for the machinery and other property mentioned in said exhibit A.

That in the event of a sale of said property in order to satisfy moneys secured by said exhibit A, that the said defendants and all persons claiming by, through, or under it, may be forever barred of all equity, claim or title in or to the said property and every part thereof.

That subpoena in chancery issue out of this court directed to said defendant, Ocklawaha Valley Railroad, a Florida corporation requiring it to appear to answer this your orator's bill on Monday the 7th day of January, 1918.

And your orator will ever pray.

ELDON & BISBEE,
HOCKER & MARTIN,
Sol. for Complainant.

85

EXHIBIT "B."

Deficit of the Ocklawaha Valley Railroad Company, Showing Gross Earnings and Expenses from April 15th, 1915, to October 31st, 1917.

	Earnings.	Expenses.	Deficit.
From April 15th, 1915, to December 31st, 1915 ..	31,940.36	36,941.86	5,001.50
From January 1st, 1916, to December 31st, 1916 ..	38,588.52	50,591.52	12,003.00
From January 1st, 1917, to October 31st, 1917	32,142.08	50,669.09	18,527.01
Total	\$102,670.96	\$138,202.47	\$35,531.51

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OCKLAHAHA VALLEY RAILROAD COMPANY

to

WILLIAM S. HOOD, Trustee.

(Duplicate Original.)

Mortgage securing \$2,000,000 first mortgage gold bonds, payable July 1, 1945. Interest payable January 1 and July 1.

Dated, July 1, 1915.

(Endorsed:) #8638. Filed for record in the office of the clerk of the Circuit Court of Marion County, Florida, on the 28 day of July at 4 o'clock P. M. 1915, and duly recorded in Mortgage Book 49 on pages 1-32 on the 19 day of August 1915 and record verified. Witness my hand and official seal. P. H. Nugent, Clerk, (Clerk's Seal), by Ruth Ervin, D. C. Record Verified.

87 Indenture made this 1st day of July, 1915, between Oklawaha Valley Railroad Company, a corporation organized and existing under the laws of the State of Florida, and having its principal office in the City of Ocala, Marion County, Florida, (hereinafter called the "Railroad Company"), party of the first part, and William S. Hood, of the Township of Mantua, County of Gloucester, State of New Jersey (hereinafter referred to and called the "Trustee"), party of the Second part.

Whereas, the Railroad Company has been duly incorporated for the purpose, among other things, of maintaining and operating a railroad, steamboats, power boats and barges for the transportation of freight and passengers for hire and to exercise and enjoy such powers, privileges and immunities as are conferred upon railroad and canal companies by the laws of the State of Florida; and

Whereas, the Railroad Company, as thereto lawfully authorized, has acquired certain railway lines and properties appurtenant thereto, situate in the Counties of Marion and Putnam, in the State of Florida, and may, from time to time, acquire other properties, and desires to provide for the improvement, extension, enlargement, equipment and development of the properties now owned as well as those which it may hereafter acquire, and

Whereas, the Railroad Company is empowered to borrow money for its general corporate purposes, and to issue and dispose of its bonds or other obligations and mortgage or pledge any or all of its rights, privileges, franchises and property to secure the payment of said bonds or other obligations; and

88 Whereas, for the purpose of completing payment for the properties heretofore acquired, for use in acquiring other properties, and in improving, extending, enlarging, equipping and developing the properties now owned and those which it may hereafter acquire, and for other corporate purposes, the Railroad Company has, by its stockholders and Board of Directors, been duly authorized to execute and deliver a Deed of Trust and Mortgage conveying to the Trustee herein named, in trust, for the uses and purposes herein set forth, all of its property, rights and franchises, of whatsoever character the same may be, now owned or hereafter to be acquired, to secure an issue of bonds up to the aggregate principal amount of Two Million (\$2,000,000) Dollars, payable thirty (30) years after the date thereof, together with interest thereon at the rate of 5% per annum, which interest is to be payable semi-annually after the date of such bonds; that such bonds be issued in

denominations of One Thousand (\$1,000) Dollars and of Five Hundred (\$500) Dollars, or any multiple of said amounts; that they be in the forms hereinafter set forth, and that the said Deed of Trust and Mortgage also be in the form of this instrument; and

Whereas, each and all of said bonds are to be signed by the President or Vice President and attested by the Secretary or Assistant Secretary and, if not registered, are to have attached thereto interest coupons bearing the facsimile lithographed, engraved or printed signature of the Treasurer of the Company, substantially in the form hereinafter contained; and

Whereas, the form of coupon bond is to be as follows:

89

No. —,

§ —,

United States of America,

State of Florida,

Ocklawaha Valley Railroad Company,

First Mortgage Gold Bond.

Ocklawaha Valley Railroad Company (hereinafter called the "Railroad Company"), for value received, promises to pay to the bearer, or if registered, to the registered owner of this bond, on the 1st day of July, in the year 1945, at the office or agency of the Railroad Company, in the Borough of Manhattan, City of New York, the sum of — Dollars, in gold coin of the United States of America of the standard of weight and fineness existing on the 1st day of July, 1915, and to pay interest thereon at the rate of five per cent per annum from the 1st day of July 1915, semi-annually, at the said office or agency, in like gold coin, on the 1st day of January and the 1st day of July in each and every year until the payment of said principal sum, but only upon presentation and surrender, as severally they shall mature, of the coupons therefor annexed hereto.

Both the principal and interest of this bond shall be paid without deduction for any taxes, assessments or other governmental charges which the Railroad Company or the Trustee hereinafter mentioned may be required to pay thereon or to retain therefrom under any present or future law of the United States, or of any state, County, Municipality or other lawful taxing authority therein.

This bond is one of a duly authorized issue of coupon bonds and registered bonds of the Railroad Company known as its "First Mortgage Gold Bonds," limited to the principal amount of
90 \$2,000.00, at any time outstanding; all of which bonds are issued and to be issued under and in pursuance of, and all to be equally secured by, a mortgage and deed of trust, dated the 1st day of July, 1915, duly executed by the Railroad Company to William S. Hood, as Trustee, to which reference is hereby made for a statement

and description of the property and franchises mortgaged and pledged, the nature and extent of the security, the rights of the holders of bonds under the same, and the terms and conditions upon which said bonds are issued, received, held and secured. In case of certain defaults specified in said mortgage the principal of all of said bonds issued thereunder may become or be declared due and payable in the manner and with the effect provided in said mortgage.

This bond shall pass by delivery unless registered in the owner's name on the books of the Railroad Company at its office or agency, maintained for the purpose with the Trustee in the Borough of Manhattan, City of New York, such registration being noted on the bond by the Trustee as the Agent of the Railroad Company; after such registration no transfer shall be valid unless made on the Trustee's books by the registered owner in person or by his duly authorized attorney, and similarly noted on the bond; but the same may be discharged from registration by being transferred to bearer, and thereupon transferability by delivery shall be restored; but this bond may again, from time to time, be registered or transferred to bearer as before. Such registration, however, shall not affect the negotiability of the coupons, which shall continue to be transferable by delivery merely.

The holder of this bond, at his option, may surrender the same for cancellation, with all unmatured coupons thereto appertaining, in exchange for a registered bond without coupons, of the same series as provided in the said mortgage, and on payment, if the Railroad Company shall require it, of the charges provided therefor. In like manner and upon like terms any such registered bond may in turn be exchanged for a coupon bond or coupon bonds of the like aggregate principal amount.

This bond is subject, upon four weeks' notice given as provided in said mortgage, to call and redemption at its face value and accrued interest.

No recourse shall be had for the payment of the principal of or the interest upon this bond, or for any claim based hereon, or otherwise in respect hereof or of said mortgage under which this bond is issued against any incorporator, stockholder, officer or director, past, present or future of the Railroad Company, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration of the issue hereof, expressly released, as provided in said mortgage.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under the said mortgage.

In witness Whereof, Ocklawaha Valley Railroad Company has caused these presents to be signed by its President or Vice-President and its corporate seal to be affixed hereunto and to be attested by its Secretary or Assistant Secretary, and coupons for said interest

bearing the engraved fac-simile signature of its Treasurer, to be attached hereto, as of the 1st day of July, 1915,

**OCKLAWAHA VALLEY
RAILROAD COMPANY.**

By _____,
President.

Attest:

Secretary.

92 (Form of Registered Bond.)

No. —,

§ —,

United States of America,

State of Florida,

Ocklawaha Valley Railroad Company,

First Mortgage Gold Bond.

Ocklawaha Valley Railroad Company (hereinafter called the "Railroad Company"), for value received, promises to pay to _____, or registered assignee, on the 1st day of July, in the year 1945, at the office or agency of the Railroad Company, in the Borough of Manhattan, City of New York, the sum of — dollars in gold coin of the United States of America of the standard of weight and fineness existing on the 1st day of July, 1915, and to pay interest thereon at the rate of five per cent per annum from the 1st day of July, or the 1st day of January as the case may be next preceeding the date hereof (unless this bond be dated January or July 1st, in which case from the date hereof), semi-annually, at the said office or agency, in like gold coin on the 1st day of January and the 1st day of July in each and every year until the payment of said principal sum.

Both the principal and interest of this bond shall be paid without deduction for any taxes, assessments or other governmental charges which the Railroad Company or the Trustee hereinafter mentioned may be required to pay thereon or to retain therefrom under any present or future law of the United States, or of any State, County, Municipality or other lawful taxing authority therein.

93 This bond is one of a duly authorized issue of coupon bonds and registered bonds of the Railroad Company known as its "First Mortgage Gold Bonds," limited to the principal amount of \$2,000,000 at any one time outstanding; all of which bonds are issued and to be issued under and in pursuance of, and all to be equally secured by, a mortgage or deed of trust dated the 1st day of July, 1915, duly executed by the Railroad Company to William S. Hood, as Trustee, to which reference is hereby made for a statement and description of the property and franchises mortgaged and

pledged; the nature and extent of the security, and the terms and conditions upon which said bonds are issued, received, held and secured. In case of certain defaults specified in said mortgage the principal of all of the said bonds issued thereunder may become or be declared due and payable in the manner and with the effect provided in said mortgage.

This bond is transferable by the registered owner hereof, in person, or by his duly authorized attorney, on the books of the Railroad Company at its office or agency maintained for the purpose with the Trustee in the Borough of Manhattan, City of New York, upon surrender and cancellation of this bond; and thereupon a new registered bond will be issued to the transferee in exchange herefor; or the registered owner of this bond, at his option, may surrender the same for cancellation in exchange for a like amount of the principal hereof in coupon bonds, and on payment, in either case, if the Railroad Company shall require it, of the charges provided therefor. In like manner and upon like terms any such coupon bond or coupon bonds bearing all unmaturing coupons may, in turn, be exchanged for a registered bond or registered bonds without coupons of the like aggregate principal amount.

94 This bond is subject, upon four weeks' notice given as provided in said mortgage, to call and redemption at its face value and accrued interest.

No recourse shall be had for the payment of the principal of or the interest upon this bond or for any claim based hereon, or otherwise in respect hereof, or of said mortgage under which this bond is issued against any incorporator, stockholder, officer or director past, present or future of the Railroad Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration of the issue hereof, expressly released as provided in said mortgage.

This bond shall not be valid or become obligatory for any purpose until it shall have been authenticated by the certificate, hereon endorsed, of the Trustee under said mortgage.

In witness whereof, Oklawaha Valley Railroad Company has caused these presents to be signed by its President or Vice-President and its corporate seal to be affixed hereunto and to be attested by its Secretary or Assistant Secretary this — day of —, 19—.

**OKLAWAHA VALLEY RAILROAD
COMPANY.**

By ————,
President.

Attest:

Secretary.

95 And whereas, There are to be attached to the said coupon bonds, at the time of the issue thereof, coupons representing the semi-annual installments of interest which are to become due

thereon, each of which coupons is to be substantially of the following tenor:

(Form of Interest Coupon.)

No. —,

\$—.

On the 1st day of —, 19—, Oklawaha Valley Railroad Company will pay to bearer, at its office or agency in the Borough of Manhattan, City of New York, — Dollars in United States Gold coin of the standard existing July 1st, 1915, being six months' interest then due on its First Mortgage Gold Bond, No. —, unless said bond shall have been called for previous redemption.

Treasurer.

And whereas, every registered bond without coupons shall bear thereon an endorsement or notation in the form hereinafter specified, setting forth that such bond is issued in lieu of or in exchange for coupon bonds for \$500 or \$1,000 each, none of which is contemporaneously outstanding; and

Whereas, on each of the bonds issued under and secured by this Indenture, there is to be endorsed a certificate of the Trustee or his successor appointed hereunder, that it is one of the bonds referred to in this Indenture, and no bond shall be secured by this Indenture or shall be obligatory for any purpose until such certificate shall have been executed by the Trustee, or his successor appointed hereunder; said certificate to be substantially of the following tenor, to-wit:

986

(Form of Trustee's Certificate.)

This bond is one of the bonds referred to in the within mentioned Indenture.

WILLIAM S. HOOD,

Trustee.

And whereas, each of the coupons to be attached to any of the said coupon bonds which may be issued, is to be authenticated by the engraved facsimile signature of the present Treasurer or of any future Treasurer of the Railroad Company, and the Railroad Company may adopt and may use for that purpose the engraved facsimile signature of any person who shall have been such Treasurer, notwithstanding the fact that he shall have ceased to be such Treasurer at the time when such coupon bonds shall be actually certified and delivered and such coupons shall be attached to the bonds; and

Whereas, all acts and things prescribed by law and by the Charter and By-Laws of the Railroad Company have been duly performed and complied with and the Railroad Company has executed this Indenture and proposes to issue the bonds hereby secured in the exercise of each and every legal right and power in it vested;

Now, therefore, this Indenture witnesseth:

That, in consideration of the premises and of the purchase and

acceptance of said bonds by the holders thereof and of the sum of One dollar (\$1.00) to it duly paid by the Trustee at and before the creating and delivery of these presents, the receipt whereof is hereby acknowledged, and in order to secure the payment of the principal and interest of all such bonds at any time issued and outstanding under this Indenture according to their tenor and effect, and the performance and observance of all the covenants and conditions therein and herein contained, and to declare the terms and conditions upon which such bonds shall be issued and received, Oklawaha Valley Railroad Company, party of the first part hereto, has executed and delivered these presents and has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over, and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto the Trustee, party of the second part, his successors and assigns forever:

All and singular the lands, properties, rights, powers, privileges and franchises of the Railroad Company now owned or which may hereafter be acquired (which are sometimes herein called collectively the "mortgaged properties") and which are more specifically described as follows:

(1) The line of railroad extending from the terminus of the Company, in the City of Ocala, a distance of six miles, to a point known as "Silver Springs," in the County of Marion, as described and defined in and subject to the terms of that certain lease and agreement, dated December 14, 1909, between the Seaboard Air Line Railroad Company and the Ocala Northern Railroad Company.

(2) The line of Railroad Extending from Silver Springs to Fort McCoy, in the County of Marion, a distance of 12.3 miles; from Fort McCoy to the City of Palatka, in Putnam County, a distance of 32.5 miles, passing through the Towns of Bay Lake and Orange Springs, a Marion County, and passing through Marion County into Putnam County at or near Orange Creek, and thence in Putnam County by way of the Towns of Kenwood, Rodman and Kenilworth, to the City of Palatka, and all extensions thereof.

(3) The line of railroad extending from the terminus of the Company's line in the City of Palatka, a distance of one and one-half miles, to the terminus of the Company's line in the said City of Palatka, leased from the Georgia, Southern & Florida Railway Company.

(4) The right of way of the Company, one hundred feet in width, from Silver Springs to the City of Palatka.

(5) All and singular the franchises, rights, privileges and immunities now or hereafter appendant or appurtenant to or used in connection with the said lines of the Company and any and all extensions and branches thereof, together with all the reversions, remainders, revenues, rents, income and profits thereof.

98 (6) All rights of way, railroad tracks, depots, buildings, power houses, shops, grounds, real estate, terminal properties, switches, transmission lines, machines and machinery, locomotives, tenders, cars and other rolling stock and equipment, furniture, tools, implements, appendages and appurtenances to or used in connection with such lines of railroad in any manner whatsoever, now belonging to or in the possession of the Company, or which shall hereafter be by it acquired, constructed or provided for use upon or in connection with or by way of additions to or extensions of said lines of railroad, and all the reversions, remainders, revenues, rents, income and profits thereof.

(7) And all books, records, devices and fixtures which the Company now owns or may hereafter acquire and all bonds, mortgages, notes, contracts, rights, licenses, leases, agreements, privileges and immunities now owned, held, possessed or enjoyed by the Company, or at any time hereafter acquired by the Company, and the reversion and reversions, remainder and remainders, revenues, rents, income and profits thereof.

(8) Any and all lines of railway, roadbeds, extensions and branches, sidings switches and turn outs, superstructures, overhead electrical construction, all power and other plants, water rights, transmission lines, all tools, wires, cables, telegraph and telephone lines, all terminal properties, stations, sub-stations, decks, and wharves, yards, car houses, machine shops, offices, buildings, structures and lands, all bridges, dams, boats, ferries, cars, motors and rolling stock, all rights of way and all dynamos and converters, transformers, generators, switchboards, arresters, circuit breakers, meters, water wheels, equipment, machinery, tools, implements, apparatus and appliances, all replacements, renewals, additions, improvements, and betterments, all fixtures, supplies, furniture, chattels, all corporate rights, privileges and franchises, immunities, easements, tenements, hereditaments and appurtenances, reversions and remainders, all contract rights and rights under agreements, and all leases, leasehold rights and trackage arrangements, all patents, patent rights, inventions, processes, trademarks, and all other such privileges and rights.

99 also all the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the Railroad Company, in and to the said property and every part and parcel thereof with the appurtenances and all other property appurtenant or appendant to said line of railroad which the Railroad Company now owns or which it shall hereafter acquire. The above specific enumeration of property shall not exclude any property of any sort whatsoever hereafter acquired, but all property, of whatever kind and description appurtenant or appendant to said line or railroad, which the Railroad shall hereafter acquire, shall be included within the lien of this Indenture.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise thereto appertaining, and all the estate and rights of the Railroad Company in

and to the said mortgaged properties and in and to each and every part thereof; and all the rights, privileges and franchises, corporate, public and municipal, of the Railroad Company appertaining to the said mortgaged properties, and to each and every part thereof or otherwise howsoever.

To have and to hold the above granted premises, property, rights, franchises, and appurtenances, subject as aforesaid unto the Trustee, the successors in the trust and their assigns forever.

But in trust, nevertheless, for the equal and proportionate use, benefit and security of all present and future holders of any of the bonds issued and to be issued by the Railroad Company and certified by the Trustee under and secured by this Indenture and for the enforcement of the payment of said bond or bonds and of the interest thereon when payable and the performance of and compliance with the covenants and conditions of said bonds and of this Indenture, without preference, priority or distinction as to lien or otherwise of any one bond over any other bond issued hereunder, by reason of priority in the issue or negotiation thereof, or by reason of the purpose of its issue, or by reason of the execution of any instrument supplemental hereto or otherwise howsoever, so that each and every

100 bond issued or to be issued hereunder shall have the same right, lien and privilege under and by virtue of this Indenture and any instrument supplemental hereto, and so that the principal and interest of each bond shall, subject to the terms thereof and hereof, be equally and proportionately secured hereby and by any instrument supplemental hereto as if all had been duly issued, sold and negotiated and simultaneously with the execution and delivery hereof.

And it is hereby covenanted and declared that such bonds are to be executed and certified and delivered and that the mortgaged properties are to be held by the Trustee, subject to the further covenants, conditions, uses and trusts hereinafter set forth, and it is covenanted between the parties hereto and for the benefit of the respective holders from time to time of bonds issued hereunder as follows, viz:

Article One.

Section 1. The amount of the bonds hereby secured which may be executed by the Railroad Company and which may be certified by the Trustee is limited so that never at any one time shall there be outstanding bonds hereby secured for an aggregate principal sum exceeding Two million dollars (\$2,000,000).

From time to time bonds, to be secured hereby shall be executed by the Railroad Company and by it shall be delivered for certification to the Trustee; and thereupon, as provided in this Article, and not otherwise, the Trustee shall certify and shall deliver the same. In case any of the officers, who on behalf of the Railroad Company shall have signed and sealed any bond or bonds issued under this Indenture, shall die or shall cease to be such officers of the Railroad Company before the bonds so signed and sealed shall have been

actually certified and delivered by the Trustee, nevertheless upon request of the Railroad Company such bond or bonds may be issued, certified and delivered as herein provided, as though the persons who signed and sealed such bonds had not died or ceased to be such officers of the Railroad Company, and also any bond may be signed and sealed in behalf of the Railroad Company by such persons as, at the actual date of the execution of the bond, shall be the proper officers of the Railroad Company, although at the time of the date of the bond such person shall not be an officer of the Railroad Company. Coupons attached to the coupon bonds, if any such

101 bonds be issued, shall be authenticated by the engraved facsimile signature of the present Treasurer or of any future Treasurer of the Railroad Company, and for that purpose the Railroad Company may adopt and use the engraved facsimile signature of any treasurer, notwithstanding the fact that at the time when such bonds shall be actually certified, and delivered, he shall have ceased to be the Treasurer of the Railroad Company.

At the option of the Railroad Company from time to time, any bond or bonds may be executed, certified and delivered originally either as a coupon or bonds or as a registered bond or bonds. The coupon bonds each shall be for the principal sum of \$500 or \$1,000. The registered bond or bonds each shall be for the principal sum of \$500 or \$1,000, or for such principal sum being a multiple of either of said amounts as shall have been authorized by the Board of Directors of the Railroad Company. Coupon bonds may be issued in exchange for a like amount of registered bonds. A registered bond or bonds, without coupons, may be issued in lieu of a like aggregate principal amount of coupon bonds, or in exchange therefor.

Whenever coupon bonds shall be issued in exchange for a surrendered registered bond without coupons, such bonds so issued shall bear numbers to correspond with the distinctive numbers endorsed upon the surrendered registered bond.

The Trustee shall not certify or deliver any coupon bond hereby secured until all coupons thereof, then matured, shall have been detached and shall have been cancelled. The Trustee shall not certify or deliver any registered bond without coupons, unless the same shall have been dated as of the date of the certification thereof, except as provided in Section 6 of this Article One.

Every registered bond without coupons, either issued originally as such or delivered as hereinafter provided in exchange for a coupon bond or coupon bonds, or upon a transfer, shall bear interest from the semi-annual interest date, as herein specified, next preceding the date thereof, unless such date be a semi-annual interest date, in which case the bonds shall bear interest from the date thereof.

102 Only such of said bonds as shall bear thereon a certificate substantially in the form hereinbefore recited, duly executed by the Trustee, shall be secured by this Indenture or shall be entitled to any lien or benefit hereunder. No such bond or any coupon thereunto appertaining shall be valid for any purpose until such certificate shall have been duly endorsed on such bond. Such certificate of the Trustee, upon any bond executed by the Railroad

Company shall be conclusive and the only evidence that the bond so certified was duly issued hereunder and is entitled to the benefit of the trust hereby created.

Section 2. Of the bonds authorized to be issued under and to be secured by this Indenture, bonds for the aggregate principal sum of Three Hundred thousand Dollars (\$300,000.00) shall be forthwith certified by the Trustee and delivered upon the order of the Railroad Company, signed by its President or Vice-President under its corporate seal and duly attested by its Secretary or Assistant Secretary.

Section 3. The remainder of the bonds authorized to be issued under and to be secured by this Indenture shall be reserved for future use by the Railroad Company, when and as, in its judgment, required for use for some one or more purposes specified in this Section or to reimburse the Railroad Company for sums expended by it for any of such purposes, and such reserved bonds from time to time may be executed, and when executed, forthwith shall be certified by the Trustee and delivered by it to the Railroad Company or according to its order, but only as herein provided and subject to the conditions and restrictions herein stated.

(1) The purposes for which such reserved bonds from time to time may be executed and, when executed, shall be certified and delivered, and for which such bonds or their proceeds may be used, are:

(a) The construction or acquisition of extensions, additions, improvements and betterments upon, along or appertaining to, or for use in connection with any railways, plants, works or properties belonging to the Railroad Company at the time of such construction or acquisition, and being subject to the lien of this Indenture.

103 (b) The construction or acquisition of additional properties, including, but not limited to, railways, power or other plants, transmission lines or equipment, which may be necessary or convenient in the carrying on or accomplishment of any of the objects or purposes for which the Railroad Company was organized, as specified in or implied from its Certificate of Incorporation, subject to the provisions relating to the construction or acquisition of extensions or additions contained in the previous sub-section.

(c) The refunding, exchanging, purchasing, paying or retiring of bonds, or other promissory obligations, constituting a lien upon the whole or any part of the properties which may hereafter be acquired by the Railroad Company prior to the lien of the bonds issued hereunder.

(d) The purchase, exchange or acquisition of bonds or other promissory obligations or shares of capital stock of any corporation or certificates of interest issued by Trustees, to the extent permitted by law.

2. Before delivered bonds under this Section, there shall be delivered to the Trustee a copy of a resolution of the Board of Directors of the Railroad Company, certified by its Secretary or Assistant Secretary under the corporate seal, calling for the certification and delivery of a specified amount of such bonds, designating the purpose or purposes for which they are to be used and directing the officers of the Railroad Company to set aside such amount of bonds or their proceeds, separate and apart from any other assets and funds of the Railroad Company, and to use the same only for the purposes so designated or to reimburse the Railroad Company for sums expended by it for any of such purposes.

(3) From time to time, there shall be so delivered out of such reserved bonds such amount as shall be called for in such resolutions, and the decision of the Board of Directors of the Railroad Company, as expressed in such resolutions as to the amount of bonds required for the purpose or purposes designated in such resolutions and as to the value placed upon such bonds in determining such amount, shall be binding and conclusive on the Trustee and the bondholders.

(4) The Trustee before delivered any of such reserved
104 bonds, deliverable under this Section, shall require the Railroad Company to furnish, in addition to such resolutions of its Board of Directors, a certificate or certificates, stating:

(a) That all bonds then requested to be delivered under this Section, or the proceeds thereof, will be actually used or actually appropriated and set aside for said authorized purposes, or for some one or more of them, or to reimburse the Railroad Company as aforesaid, indicating briefly the particular purpose or purposes and the particular properties or securities acquired or to be acquired or the particular additions, betterments or improvements made or to be made and the amount of bonds required therefor, or the amount of bonds required to produce the amount of cash to be used or applied or actually appropriated and set aside for each such purpose, or to reimburse the Railroad Company for sums expended by it for any of such purposes.

(b) That no part of such properties, securities, additions, betterments, or improvements or certified expenditures was included in any previous certificate furnished hereunder or was provided for out of any bonds issued hereunder or any monies received by the Railroad Company from the Trustee under any provision of this Indenture.

(c) That no part of such properties, securities, additions, betterments, improvements or certified expenditures was or will be included in or charged to the operating or maintenance expenses of the Railroad Company.

(d) That all bonds theretofore delivered have been actually used or actually appropriated for the purposes for which issued.

(5) The Railroad Company covenants that, whenever all the bonds issued under this Section shall have been delivered to and used by the Railroad Company, it will execute and deliver to the Trustee a similar certificate, indicating the particular application of all such bonds or the proceeds thereof.

(6) Each such certificate shall be made by the officers of the Railroad Company. The same officer or officers need not certify to all the facts required to be certified under the provisions of this Section, but different officers may certify to different facts, 105 respectively. Every such certificate furnished under this Section shall be signed, first, by the President or Vice-President and, secondly, by the Treasurer or Assistant Treasurer of the Railroad Company.

The Railroad Company shall execute or shall cause to be executed any conveyance or instruments of further assurance and shall do all things that may be necessary for the purpose of subjecting to the lien and operation of this Indenture any new property acquired by the Railroad Company; and also shall furnish the written opinion of counsel for the Railroad Company to the effect that such conveyance or other instruments are sufficient for that purpose, or in lieu of such instruments of further assurance, the Railroad Company shall furnish a written opinion of counsel that no conveyance or instrument of further assurance is necessary for the purpose aforesaid. Such resolutions, statements, certificates and opinion shall be deemed and shall be taken to be full authority and direction to the Trustee for its certification or delivery of such bond under the foregoing provisions of this Section.

Section 4. Whenever in respect of expenditures of the Railroad Company, the Railroad Company, under Section 3 of this Article, shall be entitled to reimbursement out of bonds hereby secured or their proceeds, the Railroad Company, in lieu of selling or otherwise disposing of such bonds for such reimbursement, and in settlement and discharge of its claims to be reimbursed may take and accept such bonds at prices to be fixed by resolution of the said Board of Directors, certified copy of which resolution shall be lodged with the Trustee; and the bonds so taken and accepted by the Railroad Company thereafter shall be held and may be used by it for its general corporate purposes, freed and discharged from all restrictions and provisions of said Section 3 or otherwise hereunder.

Section 5. Whenever any coupon bond or bonds issued under and secured by this indenture, together with all unmatured coupons thereto belonging shall be surrendered for exchange for a registered bond or registered bonds without coupons, the Railroad Company shall execute and the Trustee shall certify and, in exchange 106 for such coupon bond or bonds, shall deliver a registered bond or registered bonds for the like aggregate principal sum. Every registered bond or bonds without coupons so delivered in exchange for a coupon bond or coupon bonds shall bear interest from the semi-annual interest date as therein specified, next pre-

ceding the date thereof, unless the bond be dated January 1st or July 1st, in which case it shall bear interest from the date thereof.

Whenever any registered bond or bonds without coupons shall be surrendered for exchange for a coupon bond or bonds, the Railroad Company shall issue and the Trustee shall certify and in exchange for such registered bond or bonds without coupons shall deliver a coupon bond or coupon bonds for the like aggregate principal sum with the coupons maturing on and after the date when the next semi-annual installment of interest would have been payable on such surrendered bond or bonds.

In every case of any such exchange, the Trustee forthwith shall cancel the surrendered bond or bonds and coupons and shall deliver the same to the Railroad Company.

Whenever any registered bond without coupons shall be surrendered, transferred and cancelled, the Railroad Company, upon request therefor, shall issue to the transferor as requested and the Trustee shall certify and deliver a registered bond or registered bonds without coupons for the like aggregate principal sum.

For (1) any exchange of coupon bonds for registered bonds and for (2) any exchange of registered bonds without coupons for coupon bonds and for (3) any transfer of registered bonds without coupons, the Railroad Company, at its option, may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge and, in addition thereto, one dollar for each new coupon bond or registered bond without coupons, issued upon such exchange or transfer.

Section 6. In case any bond issued hereunder shall become mutilated or be destroyed or lost, the Railroad Company, in its discretion and on such terms as it may deem reasonable, may execute and thereupon the Trustee shall certify and deliver a new bond of like tenor upon receipt of satisfactory evidence of the destruction or loss of such bond, and upon receipt also of satisfactory indemnity.

Section 7. Pending the preparation of the definitive bonds to be issued under and secured by this indenture, the Railroad Company may execute and deliver printed bonds without coupons for such amount or amounts as may be determined by the said Board of Directors, and each of said bonds shall be marked "Temporary Bond".

Such temporary bonds shall be duly certified by the Trustee in the same manner as herein provided in respect of the definitive bonds to be issued under this indenture; and such certificate of the Trustee shall be conclusive and the only evidence that such temporary bond so certified has been duly issued hereunder and that the holder thereof is entitled to the benefit of the trusts hereby created. Such temporary bonds, duly issued and certified hereunder, shall be exchangeable at the office of the Trustee in the Borough of Manhattan, City of New York, without expense to the holder for definitive engraved bonds bearing the same rate of interest secured hereby and of denomination or denominations similar to the denomination or denominations of temporary bonds surrendered in

exchange therefor. Such temporary bonds, until definitive engraved bonds are prepared for delivery, shall be exchangeable for other temporary bonds bearing the same rate of interest of a like principal amount, whether of the same or different denominations. Immediately upon any such exchange, such temporary bonds so surrendered shall be cancelled by the Trustee and delivered to the Railroad Company. Until exchanged for engraved bonds, said temporary bonds shall in all respects be entitled to the lien and security of these presents.

Section 8. Nothing in this indenture or in any bond or bonds issued hereunder, expressed or implied, is intended or shall be construed to give to any person or corporation, other than the parties hereto and the holders of bonds issued under and secured by this indenture, any legal or equitable rights, remedy or claim under or in respect of this indenture or under any covenant, condition or provision herein contained; all of its covenants, conditions and provisions being intended to be and being for the sole and exclusive benefit of the parties hereto and of the holders of the bonds hereby secured.

Article Two.

Section 1. The Railroad Company will duly and punctually pay the principal and interest of each and every bond issued under this indenture at the date and the place and in the manner mentioned in such bonds or in the coupons thereto belonging, according to the true intent and meaning thereof without deduction from either principal or interest for any taxes, assessments or other governmental charges which the Railroad Company or the Trustee may be required to pay or to retain therefrom under or by reason of any present law or future law of the United States or of any State, County, Municipality or other lawful taxing authority therein. The interest on the coupon bonds shall be payable only on presentation and surrender of the several coupons for such interest as they respectively mature and, when paid, such coupons shall forthwith be cancelled. The interest on the registered bonds without coupons shall be payable only to the registered holders thereof.

Section 2. All property, security and franchises of every kind in the granting clauses of this indenture conveyed or assigned, or intended to be conveyed or assigned, including any and all property or securities now owned or which hereafter may be acquired by the Railroad Company immediately upon the acquisition thereof by the Railroad Company and without any further conveyance or assignment, shall become and shall be subject to the lien of this indenture as fully and completely as though now owned by the Railroad Company and specifically described in the granting clauses hereof; but at any and all times the Railroad Company will execute and deliver any and all such further assurances or conveyances or assignments thereof as the Trustee may reasonably direct or require for the purpose of expressly and specifically subjecting the same to the lien of this indenture; and it will also do, execute,

acknowledge and deliver or will cause to be done, executed acknowledged and delivered by any other corporation or person obligated to the Railroad Company so to do, all and every such further acts, deeds, conveyances, mortgages and transfers and assurances in the law as the Trustee shall reasonably require for the better assuring, conveying, mortgaging, pledging, assigning and confirming unto the Trustee all and singular the hereditaments and premises, assets and property hereby conveyed or assigned or intended so to be, or which the Railroad Company may be or hereafter may become obligated to convey or assign to the Trustee.

Section 3. The Railroad Company will, and hereby does, create and establish an office or agency with the Trustee, in the Borough of Manhattan, City of New York, and hereby constitutes the Trustee its agent resident at such office or agency, for all purposes associated with the payment of the principal and interest, or the demand for such payment, of all bonds issued hereunder, the registration and transfer of bonds entitled to registry and transfer hereunder, at which office or agency, the Railroad Company will keep a register or registers for the registration or transfer of the bonds issued hereunder in which, subject to such reasonable regulations as it may prescribe, it will register all such bonds without coupons and also, upon presentation thereof for such purpose, any such coupon bonds as to the principal sum thereof; and at all reasonable times such register or registers shall be open to the inspection of the Trustee.

Upon presentation to the Trustee at the place where such register shall be kept, of any such registered coupon bond accompanied by delivery of a written instrument of transfer in a form approved by the Railroad Company, executed by the registered holder, such bond shall be transferred upon such register and such transfer shall be noted by the Trustee upon the bond. The registered holder of any such registered coupon bond shall have the right also to cause the same to be registered as payable to the bearer, in which case transferability by delivery shall be restored and, thereafter, the principal of such bond when due shall be payable to the person presenting the bond; but any such coupon bond, registered as payable to bearer may be registered against in the name of the holder with the same effect as a first registration thereof. Successive registrations and transfers as aforesaid may be made from time to time as desired; and each registration of a coupon bond shall be noted by the Trustee on the bond. For any such transfer or registration of a coupon bond, the Railroad Company may require the payment of a sum sufficient to reimburse it for any stamp tax or other governmental charge.

Registration of any coupon bond, however, shall not affect the transferability of any coupon thereto belonging by delivery merely, and payment to the bearer of any such coupon shall discharge the Railroad Company in respect of the interest therein mentioned whether or not the bond shall have been registered.

Any registered bonds without coupons may be transferred upon such register at such office or agency by the registered holder in per-

son or by attorney upon surrender of such bond to the Trustee for cancellation accompanied by delivery of a proper instrument of transfer duly executed by the registered holder of the bond; and thereupon a new registered bond or new registered bonds for an equivalent principal sum shall be issued to the transferee or transferees, as provided in Section 5 of Article One hereof.

Section 4. The Railroad Company will not voluntarily create or suffer to be created any debt, lien or charge which would be prior to the lien of these presents upon the mortgaged or pledged premises and property or any part thereof, or upon the income thereof; and within three months after the same shall accrue, it will pay or cause to be discharged or will make adequate provision to satisfy and discharge all lawful claims and demands of mechanics, laborers and others which, if unpaid, might by law be given precedence to this indenture as a lien or charge upon the mortgaged properties or any part thereof or the income thereof; provided, however, that the Railroad Company shall have the right to contest by legal proceedings any such debt, lien or charge, and, pending such contest, may delay or defer the payment or discharge thereof.

Section 5. The Railroad Company from time to time will pay and discharge all taxes, assessments and governmental charges (the lien thereof would be prior to the lien hereof) lawfully imposed upon the premises or property subject to this Indenture, or upon any part thereof, or upon the income or profits thereof, and also all taxes, assessments and governmental charges lawfully imposed upon the lien or interest of the Trustee in respect of such premises or property, so that the lien and priority of this Indenture shall be fully preserved at the cost of the Railroad Company without expense to the Trustee or the bondholders; provided, however, that the Railroad Company shall have the right to contest by legal proceedings any such tax, assessment or charge and, pending such contest, may delay or defer the payment thereof.

Section 6. The Railroad Company will diligently maintain, use and operate the mortgaged premises and will do all lawful acts and take all lawful measures that may be reasonably required to preserve and protect the mortgaged premises and the earnings, income, rents, issues and profits thereof. The Railroad Company may, however, upon such terms as its Board of Directors may determine, lease the whole or any part of the mortgaged premises subject to this Indenture. Any lease so made, however, shall be terminable at the option of the Trustee in case default shall be made as provided in Section 2, of Article Four hereof.

Section 7. The Railroad Company shall and will insure and keep insured against the destruction or injury by fire all such parts of the mortgaged properties as, in its opinion, are liable to be destroyed or injured by fire, in such amount as it shall determine, payable in case of loss to the Trustee and all monies collected from such insurance and paid to the Trustee hereunder shall be held by the Trustee for the further security of the bondholders hereunder until the Railroad

Company after the fire shall have applied a sum of money to the reconstruction or repair of the part of the premises destroyed or injured or to the erection of other permanent improvements upon such mortgaged properties or to the acquisition of other property: whereupon from such insurance monies held by the trustee there shall be paid to the Railroad Company from time to time an amount equal to the amount so applied by it after fire to such reconstruction, repair, erection or acquisition.

Such payments shall be made by the Trustee upon the delivery to it of certificates signed and certified as provided in Section 3 of Article One hereof, stating with reasonable detail the purposes for which said expenditures have been made, the cost thereof and that the Railroad Company had not been reimbursed therefor out of any of the monies deposited with the Trustee pursuant to the terms of this Indenture or from any bonds issued hereunder.

The Trustee in making any payments hereunto shall be fully protected in acting upon such certificates signed and verified as aforesaid.

Section 8. The Railroad Company will not issue, negotiate, sell or dispose of any bond or bonds hereby secured in any manner other than in accordance with the provisions of this Indenture and the agreements in that behalf herein contained; and in issuing, selling, negotiating or otherwise disposing of such bond or bonds from time to time, it will well and truly apply or cause to be applied the same or the proceeds thereof to and for the purposes herein prescribed, and to or for no other or different purposes. Subject, however, to the provisions of Section 4 of Article One of this Indenture.

Article Three.

From time to time, upon the previous giving of notice of call, as hereinafter provided, the Railroad Company shall have the right to redeem and to pay off on any interest day any and all bonds issued hereunder at the par value thereof, together with the interest accrued to the date of redemption specified in such notice. In case the Railroad Company desires to redeem less than all of the bonds outstanding, it shall, prior to the publication of such call, notify the Trustee of the amount of bonds it desires to redeem at such date and the Trustee shall then determine by lot, in such manner as it shall in its unrestricted discretion select, the particular bonds to be so redeemed. Before any such bonds shall become redeemable, the Railroad Company, in each case, shall advertise at least once in each week for four successive weeks, in a newspaper of general circulation, published in the City and County of New York, and in one newspaper of general circulation published in the City of Jacksonville, Florida, a notice of redemption, addressed to the holders of bonds issued under this Indenture, stating that the Railroad Company has called for redemption the bonds specified in such notice, and that, upon a date therein designated, there will become and be due and payable, upon each of the bonds specified in such notice, the

principal thereof and the accrued interest to date of redemption so designated. A similar notice shall be sent by the Railroad Company through the mails, postage prepaid, on or before the date of the first publication of the published notice, directed to all registered holders of bonds to be redeemed, as their addresses shall appear on the register. Before the date fixed for redemption, the amount required therefor shall be paid by the Railroad Company to the Trustee for account of the holders of the bonds to be redeemed.

Upon the giving of such notice, the bonds therein specified shall become and be due and payable at the office of the Trustee in the City of New York on the date designated in such notice, at the par value thereof and the last matured interest installment. The sum payable as principal and interest of each coupon shall be payable to the bearer of, if registered, to the registered holder thereof, but in no case, except upon surrender of such bond and of all coupons for interest thereon not due at the date of redemption designated in such notice and of each registered bond without coupons, to be registered holder thereof upon surrender of such bond. All interest installments that shall have matured on coupon bonds on or prior to the date of redemption designated in such notice shall continue to be payable to the bearers severally and respectively of the coupons for such installments. All bonds that shall be redeemed and paid hereunder, together with all such coupons, shall thereupon be cancelled.

From and after the date of redemption designated in any notice so advertised, The Railroad Company, not being in default in respect thereto, no further interest shall accrue upon any of the bonds so called for redemption; and anything in such bond or bonds or in such coupons or in this Indenture to the contrary notwithstanding, any coupons for interest thereon purporting to mature after such date shall become and be null and void. All bonds thus redeemed shall be surrendered to the Trustee and be cancelled by him and returned to the railroad company. No bonds thus redeemed shall be reissued.

Article Four.

Section 1. Neither any coupon belonging to any bond hereby secured nor any claim for interest on any registered bond, which in any way at or after maturity shall have been transferred or pledged separate and apart from the bond to which it relates, shall unless accompanied by such bond, be entitled in case of a default hereunder, to any benefit of or from this Indenture, except after the prior payment in full of the principal of the bonds issued hereunder and of all coupons and interest obligations not so transferred or pledged.

Section 2. In case (1) default shall be made in the payment of any installment of interest on any bonds at any time outstanding and secured by this Indenture, and any such default shall have continued for a period of three months, or in case (2) default shall be made in the payment of the principal of any bond hereby secured, or in case (3) default shall be made in the due observance or performance of any other covenant or condition herein required to be kept or per-

formed by the Railroad Company, and any such last mentioned default shall have continued for a period of three months after written notice thereof shall have been given the Railroad Company by the Trustee or by the holders of Ten per cent. (10%) in amount of the bonds hereby secured, or in case (4) an order shall be made for the appointment of a Receiver or Receivers of the Railroad Company or of the mortgaged properties, or of any part thereof, or (5) default shall be made in the payment of principal or interest of any bond or obligations, the lien of which on any of the mortgaged property

is prior to the lien of this Indenture, or to the performance 115 of or observance of any covenant or condition in any mortgage securing any of said prior lien bonds or obligations, and because of such default any right of action or of entry shall have arisen under any mortgage securing any of such prior lien bonds or obligations; then and in each and every such case the Trustee personally or by his agents or attorneys, may enter into and upon all, or any part, of the mortgaged properties hereby conveyed or intended so to be, and each and every part thereof, and may exclude the Railroad Company, its agents and servants, wholly therefrom; and having and holding the same, may use, operate, manage and control the said mortgaged properties and conduct the business thereof, either personally or by his superintendents, managers, receivers, agents, servants or attorneys, to the best advantage of the holders of the bond hereby secured, and upon every such entry from time to time at the expense of the trust estate the Trustee may make all necessary and proper repairs, renewals and replacements and useful alterations, additions betterments and improvements to and on the mortgaged properties as to him may seem judicious; and in such case the Trustee shall have the right to manage the mortgaged properties, to carry on the business and to exercise all rights and powers of the Railroad Company, either in the name of the Railroad Company or otherwise as the Trustee shall deem best, and he shall be entitled to collect and receive all earnings, income, rents, issues and profits of the same and every part thereof and also the dividends from stocks, certificates of interest and bonds and other evidences of indebtedness, subject to the indenture.

After deducting the expenses of operating said mortgaged properties and of conducting the business thereof and of all repairs, maintenance, renewals, replacements, alterations, additions, betterment and improvements and all payments which may be made for tax assessments, insurance and other or other charge upon the said mortgaged properties, or any part thereof, as well as just and reasonable compensation for his own services and for all agents, clerk servants and other employees by him properly engaged and employed he shall apply the monies arising as aforesaid as follows:

116 In case the principal of the bonds hereby secured shall not have become due, to the payment of the interest in default in the order of the maturity of the installments of such interest with interest on the overdue installments thereof at the rate of six per cent. (6%) per annum; such payments to be made ratably to the persons entitled thereto without discrimination or preference.

In case the principal of the bonds hereby secured shall have become due by declaration or otherwise, first, to the payment of the accrued interest (with interest on the overdue installments thereof at the rate of six per cent. per annum) in the order of the maturity of the installments and, next, to the payment of the principal of all bonds hereby secured; in every instance such payments to be made payable to the persons entitled to such payment without any discrimination or preference.

These provisions, however, are not intended in any wise to modify the provisions of Section 1 of this Article but are subject thereto.

Upon the Railroad Company complying with all the provisions of this indenture and of any instrument supplemental hereto, as to which the Railroad Company shall be in default, and upon the payment in full of whatever sums may be due and unpaid for principal and interest of the bonds hereby secured or payable for other purposes, and after provisions satisfactory to the Trustee shall have been made of the payment of the semi-annual installment of interest next maturing upon the bonds hereby secured, the premises shall be returned to the Railroad Company, its successors or assigns, or to whomsoever lawfully shall be entitled thereto.

Section 3. In case the Trustee shall have entered or shall have failed to enter as aforesaid into possession of the mortgaged property, or in case default shall be made and shall continue as specified in the preceding section 2 of this Article, the Trustee shall be entitled to vote on all shares of stock then subject to this Indenture,

and for the benefit of the holders of the bonds hereby secured shall be entitled to collect and receive all dividends on the shares of stock and all sums payable for principal or interest or otherwise upon any bonds or other promissory obligations that shall then be subject to this Indenture, and to apply as hereinbefore in Section 2 of this Article provided the net monies received; and as holder of any such shares of stock and of any such bonds, or other promissory obligations, to perform any and all acts or to make or execute any and all transfers, requests, requisitions or other instruments for the purpose of carrying out the provisions of this Section; but, in the event that a Receiver of the mortgaged properties shall have been appointed and shall be in possession thereof, the Trustee from time to time in his discretion may and, if requested by the holders of a majority in amount of the bonds hereby secured, shall turn over any part or all of the interest monies and cash dividends paid out of current earnings so collected by him to such Receiver, and may cooperate with such Receiver in managing and operating the mortgaged properties in such manner as the Trustee shall deem for the best interest of the holders of the bonds hereby secured.

In case all defaults shall have been made good or shall have been waived, the rights of the Railroad Company in respect to shares, bonds and other promissory obligations held hereunder shall be restored and shall continue as though no such default had taken place.

Section 4. In case default shall be made and continued as provided in Section 2 of Article Four hereof, then and in either such case the

Trustee may, and upon the written request of the holders of Twenty-five per cent. (25%) in amount of the bonds hereby secured then outstanding, the Trustee shall, by notice in writing, mailed by registered mail to the Railroad Company at its said office or agency in the Borough of Manhattan, City of New York, declare the principal of all bonds hereby secured and then outstanding to be forthwith due and payable, and upon any such declaration the same shall become and be due and payable immediately, anything in this Indenture or any of said bonds to the contrary notwithstanding.

This provision, however, is subject to the condition that, if
 118 at any time after the principal of said bonds shall have been so declared due and payable and before any sale of the mortgage-properties shall have been made, pursuant to the provisions of Section 5 of this Article, all arrears of interest upon all the bonds secured hereby, with interest at the rate of six per cent. (6%) per annum on overdue installments of interest on the bonds secured hereby shall either be paid by the Railroad Company or be collected out of the mortgaged properties and all defaults as aforesaid shall have been remedied, then and in such case the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railroad Company and to the Trustee, may rescind or annul such declaration and its consequences; provided, however, that no rescission or annulment hereunder shall extend to or affect any subsequent default or impair any right consequent thereon.

In case the Trustee shall have proceeded to enforce any rights under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned because of such waiver, or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Railroad Company and the Trustee shall be restored to their former position and rights hereunder in respect of the mortgaged properties and all rights, remedies and powers of the Trustee shall continue as though no such proceeding had been taken.

Section 5. In case default shall be made and continued as provided in Section 2 of Article Four hereof, then and in each and every such case the Trustee, with or without entry, personally or by attorney, in his discretion, either—

(a) May sell to the highest and best bidder all and singular the property and premises mortgaged hereunder, including stock, certificates of interest and bonds and other evidences of indebtedness, rights, franchises and interests and appurtenances and other real and personal property of every kind and all right, title and interest, claim
 119 and demand therein and right of redemption thereof in one lot and as an entirety, unless sale in parcels shall be required under the provisions of Section 7 of this Article Four, in which case such sale shall be made in parcels, as in said Section provided, which sale or sales shall be made at public auction, at such place or places and at such time or times and upon such terms as the Trustee may fix and briefly specify in the notice of sale to be given as herein provided, or as may be required by law; or

(b) May proceed to protect and to enforce its rights and the rights of bondholders under this Indenture by a suit or suits in equity or at law, whether for the specific performance of any covenant or agreement contained herein or in aid of the execution of any power herein granted or for any foreclosure hereunder or for the enforcement of any other appropriate legal or equitable remedy, as the Trustee being advised by counsel learned in the law, shall deem most effectual to protect and enforce any of his rights or duties hereunder.

Section 6. Upon the written request of the holders of Twenty five per cent (25%) in amount of the bonds hereby secured, in case of any default as specified in Section Two of this Article, it shall be the duty of the Trustee upon being indemnified as hereinafter provided, to take all steps needful for the protection and enforcement of his rights and the rights of the holders of the bonds hereby secured and to exercise the powers of entry or sale herein conferred, or both or to take appropriate legal proceedings by action, suit or otherwise, as the Trustee, being advised by counsel learned in the law, shall deem most expedient in the interest of the holders of the bonds hereby secured; but anything in this Indenture to the contrary notwithstanding, the holders of Seventy-five per cent. (75%) in amount of the bonds hereby secured and then outstanding from time to time shall have the right to direct and to control the action of the Trustee and the method and the place of taking any and all proceedings for sale of the mortgaged properties, subject to this indenture, or for the foreclosure of this Indenture or for the appointment of a Receiver, or for any other proceedings hereunder.

120 Section 7. In the event of sale, whether made under the power of sale herein granted or conferred, or under or by virtue of judicial proceedings, or of some other judgment or decree of foreclosure and sale, the whole of the property, subject to this Indenture, shall be sold in one parcel and as an entirety, unless such sale as an entirety be impracticable by reason of some statute or other cause, or unless the holders of a majority in amount of the bonds hereby secured then outstanding shall, in writing, request the Trustee to cause said premises to be sold in parcels, in which case the sale shall be made in such parcels as may be specified in such request, and this provision shall bind the parties hereto and each and every of the holders of the bonds and coupons hereby secured or intended so to be.

Section 8. Notice of any sale pursuant to any provision of this Indenture shall state the time and place when and where the same is to be made and shall contain a brief general description of the property to be sold and shall be sufficiently given, if published twice in each week for three successive weeks prior to such sale, in one newspaper published in the Borough of Manhattan, City of New York, and in one newspaper published in the City of Jacksonville, State of Florida, and in such other manner as may be required by law.

Section 9. From time to time the Trustee may adjourn any sale by him to be — under the provisions of this Indenture, by announcement at the time and place appointed for such sale or for such adjourned sale or sales; and, without further notice of publication, he may make such sale at the time and place to which the same shall be so adjourned.

Section 10. Upon the completion of any sale or sales under this Indenture, the Trustee shall execute and deliver to the accepted purchaser or purchasers a good and sufficient deed or good and sufficient deeds and other instruments conveying, assigning and transferring the properties and franchises sold, subject to any lien or liens which then shall be prior and superior to the lien of this Indenture and subject to which such property shall have been sold. The Trustee and his successors hereby are appointed the true and lawful attorneys irrevocable of the Railroad Company, in its name and stead to make all necessary conveyances, assignments and transfers of property thus sold; and for that purpose he and they may execute all necessary deeds and instruments of assignment and transfer and may substitute one or more persons with like power; the railroad company hereby ratifying and confirming all that its said attorneys or such substitute or substitutes shall lawfully do by virtue hereof. Nevertheless, the Railroad Company shall, if so requested by the Trustee, join in the execution and delivery of such conveyances, assignments and transfers and do such other acts as may be reasonably required by the Trustee.

Any sale or sales made under or by virtue of this Indenture, whether under the power of sale herein granted and conferred, or under or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Railroad Company, of, in and to the premises and property so sold, and shall be a perpetual bar, both at law and in equity, against the Railroad Company, its successors and assigns, and against any and all persons claiming or to claim the premises or property sold, or any part thereof, from, through, or under the Railroad Company, its successors or assigns.

The personal property and chattels conveyed or intended to be conveyed by or pursuant to this Indenture, other than stocks, certificates of interest and bonds and other evidences of indebtedness shall be real estate for all the purposes of this Indenture, and shall be held and taken to be fixtures and appurtenances of the real property and part thereof, and are to be used and sold therewith and not separate therefrom, except as herein otherwise provided.

Section 11. The receipt of the Trustee for the purchase money paid at any such sale shall be a sufficient discharge therefor to any purchaser of the property or any part thereof, sold as aforesaid; and after paying such purchase money and receiving such receipt, no such purchaser or his representatives, grantees, or assigns, shall be bound to see to the application of such purchase money upon or for any trust or purpose of this Indenture, or in any manner whatsoever shall be answerable for any loss, misapplication or non-application of any such purchase money or any part thereof or shall be

122 bound to inquire as to the authorization, necessity, expediency or regularity of any such sale.

Section 12. In case of such sale under the foregoing provisions of this Article Four, whether made under the power of sale herein granted or pursuant to judicial proceedings, the whole of the principal sum of the bonds hereby secured, if not previously due, at once shall become, and shall be due and payable, anything in said bonds or in this Indenture to the contrary notwithstanding.

Section 13. The purchase money, proceeds or avails of any such sale, whether under the power of sale herein granted or pursuant to judicial proceedings, together with any other sums which then may be held by the Trustee under any of the provisions of this Indenture as part of the trust estate or the proceeds thereof, shall be applied as follows:

First. To the payment of the costs and expenses of such sale, including a reasonable compensation to the Trustee, his agents, attorneys and counsel, and of all expenses, liabilities or advances made or incurred by the Trustee under this Indenture, and to the payment of all taxes, assessments, or liens prior to the lien of these presents, except any taxes, assessments, or other superior liens subject to which the property shall have been sold.

Second. To the payment of the whole amount then owing or unpaid upon the bonds hereby secured for principal and interest, with interest on overdue installments thereof at the rate of 6% per annum and in case such proceeds shall be insufficient to pay in full the whole amount so due and unpaid upon the said bonds, then to the payment of such principal and interest, without preference or priority of principal over interest, or of interest over principal, or of any installment of interest over any other installment of interest, ratably to the aggregate of such principal and the accrued and unpaid interest; subject, however, to the provisions of Section 1 of this Article Four.

Third. To the payment of the surplus, if any, to the Railroad Company, its successors or assigns, or to whomsoever shall be lawfully entitled to receive the same.

123 Section 14. Upon any sale as aforesaid by the Trustee, or pursuant to judicial proceedings, the Trustee or any bondholder or any other person may bid for and may become the purchaser of the property offered for sale, or any part thereof, for itself or himself, without accountability in respect thereof, except for payment of the purchase price and compliance with the terms of sale. In settlement or payment of such purchase price, any purchaser shall be entitled to use and to apply any bonds, and any matured and unpaid interest obligations hereby secured, by presenting the same so that there may be credited thereon the sums applicable to such payment pursuant to the provisions of Section 13 of this Article Four, and thereupon there shall be allowed to such purchaser, on account of such purchase price, the sums so credited on the bonds and the interest obligations so presented.

Section 15. (1) In case default shall be made in the payment of any installment of interest on any bonds at any time outstanding and secured by this Indenture, and such default shall have continued for a period of three months, or (2) in case default shall be made in the payment of the principal of any such bonds when the same shall become payable, whether at the maturity of said bonds or by declaration as authorized by this Indenture, or upon a sale as mentioned in Section 12 of this Article Four—then, upon demand of the Trustee, the Railroad Company will pay to the Trustee, for the benefit of the holders of the bonds and interest obligations hereby secured, then outstanding, the whole amount which the same shall have become due and payable on all such bonds for interest or principal, or both, as the case may be, with interest at the rate of 6% per annum upon the overdue principal and installments of interest; and in case the Railroad Company shall fail to pay the same forthwith upon such demand, the Trustee, in his own name and as trustee of an express trust, shall be entitled to recover judgment for the whole amount so due and unpaid.

The Trustee shall be entitled to recover judgment as aforesaid either before or after or during the pendency of any proceeding for the enforcement of the lien of this Indenture, and the right of the Trustee to recover such judgment shall not be affected by any entry or sale hereunder, or by the exercise of any other right.

124 power or remedy for the enforcement of the provisions of this Indenture or the foreclosure of the lien thereof. In case of a sale of the property, subject to this Indenture, and of the application of the proceeds of sale to the payment of the debt secured by this Indenture, the Trustee, in his own name and as trustee of an express trust, shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid upon any and all of the bonds issued hereunder and then outstanding, for the benefit of the holders thereof, and shall be entitled to recover judgment for any portion of the debt remaining unpaid, with interest. No recovery of any such judgment by the Trustee, and no levy of any execution upon any execution upon any such judgment upon property subject to this Indenture, or upon any other property shall in any manner or to any extent affect the lien of this Indenture upon the property or any part of the property subject to this Indenture, or any lien, right, powers or remedies of the Trustee hereunder, or any lien, right, powers or remedies of the Trustee hereunder, or any lien, rights, powers or remedies of the holders of the bonds hereby secured, but such lien, rights, powers and remedies of the Trustee and of the bondholders shall continue unimpaired as before, except as to property actually sold free and discharged from the lien hereof.

Any moneys thus collected by the Trustee under this Section shall be applied by the Trustee towards payment of the amounts then due and unpaid upon such bonds and coupons in respect of which such moneys shall have been collected, ratably and without any preference or priority of any kind (except as provided in Section 1 of this Article Four), according to the amounts due and payable upon such bonds and coupons, respectively, at the date fixed

by the Trustee for the distribution of such moneys, upon presentation of the several bonds and coupons and stamping such payment thereon, if partly paid, and upon surrender thereof, if fully paid.

Section 16. The Railroad Company will not at any time insist upon or plead, or in any manner whatever claim or take the benefit or advantage of, any stay or extension law, now or at any time hereafter in force, nor will it claim, take or insist upon, any benefit or advantage from any law now or hereafter in force providing
125 for the valuation or appraisement of the property or any part of the property subject to this Indenture, prior to any sale or sales thereof to be made pursuant to any provision herein contained, or to the decree, judgment or order of any court of competent jurisdiction, nor after any such sale or sales will it claim or exercise any right under any statute enacted by the State of Florida, or by any other State, or otherwise, to redeem the property so sold or any part thereof, and it hereby expressly waives all benefit and advantage of any such law or laws, and it covenants that it will not hinder, delay or impede the execution of any power herein granted and delegated to the Trustee, but that it will suffer and permit the execution of every such power as though no such law or laws had been made or enacted.

Section 17. Upon the filing of a bill in equity, or upon commencement of any other judicial proceedings, to enforce any right of the Trustee or of the bondholders under this Indenture, the Trustee shall be entitled to exercise the right of entry, and also any and all other rights and powers herein conferred and provided to be exercised by the Trustee upon the occurrence and continuance of default, as hereinbefore provided; and, as matter of right, the Trustee shall be entitled to the appointment of a receiver of the mortgaged properties subject to this Indenture, and of the earnings, income, dividends, revenue, rents, issues or profits thereof, with such powers as the court making such appointment shall confer; but notwithstanding the appointment of any receiver the Trustee shall be entitled as pledgee, to continue to retain possession and control of any stocks, certificates of interest and bonds or other evidences of indebtedness, cash and other property pledged or to be pledged with the Trustee hereunder.

Section 18. At any time hereafter before full payment of the bonds secured hereby, and whenever it shall deem expedient for the better protection or security of such bonds (although then there shall be no default entitling the Trustee to exercise the rights and powers conferred by Section 2 or by Section 3 of this Article Four, the Railroad Company, with the consent of the Trustee, may surrender and may deliver to the Trustee full possession of the whole
or of any part of the property, premises and interests hereby
126 conveyed or assigned, or intended so to be, and may authorize the Trustee to collect the dividends and interest on all shares of stock, certificates of interest and bonds and other evidences of indebtedness subject to this Indenture, and to vote upon all such shares of stock or certificates of interest for any period fixed or in-

definite. In such event the Trustee shall enter into and upon the premises and property so surrendered and delivered, and shall take and receive possession thereof, for such period, fixed or indefinite, as aforesaid, without prejudice, however, to its right at any time subsequently, when entitled thereto by any provision hereof, to insist upon maintaining and to maintain such possession though beyond the expiration of any such prescribed period, and the Trustee, from the time of his entry upon such premises and property, shall work, maintain, use, manage, control and employ the same in accordance with the provisions of this Indenture, and shall receive and apply the income and revenues thereof as provided in Section 2 of this Article Four.

Upon application of the Trustee, and with the consent of the Railroad Company, if then there be no subsisting default such as is specified in said Section 2 of this Article Four and without such consent if then there shall be such a subsisting default, a receiver may be appointed to take possession of, and to operate, maintain and manage the whole or any part of the property subject to this Indenture, and the Railroad Company shall transfer and deliver to such receiver all such property, wheresoever the same may be situated; and in every case, when a receiver of the whole or any part of said property shall be appointed under this section, or otherwise, the net income and profits of such property shall be paid over to, and shall be received by, the Trustee, for the benefit of the holders of the bonds hereby secured; provided, however, that notwithstanding the appointment of any such receiver the Trustee as pledgee shall be entitled to retain possession and control of any stocks, certificates of interest and bonds or other evidences of indebtedness pledged or to be pledged with the Trustee hereunder.

Section 19. In case of any default hereunder, if, in order to preserve the franchises of the Railroad Company and to avoid
127 foreclosure and sale involving the organization of a successor company, any plan of reorganization shall be proposed with provisions for the modification of this Indenture, so far as to authorize and require the creation of new liens upon the property subject to this Indenture, prior and superior to the lien hereof, then, and in every such case registered holders of four-fifths in amount of all of the bonds hereby secured then outstanding, by writing in duplicate, may direct the Trustee, in behalf of all the holders of all bonds then or thereafter issued hereunder, to acquiesce in the provisions of such plan, which plan also may determine and provide for the interest of other creditors and lienors and of shareholders of the Railroad Company. This special power, however, is granted to the registered holders of four-fifths in amount of the bonds upon the express condition that no bond hereby secured and then outstanding shall be changed as to the amount of principal or the date of payment thereof, or as to the rate or dated of payment of interest. Thereupon, but not otherwise, the Trustee shall, by writing, acquiesce in such provisions of such plan, and such acquiescence by the Trustee shall constitute the irrevocable assent of all holders of bonds and coupons hereby secured to any such accepted modifications, as set forth in such plan and necessary to give effect to such

provisions thereof. All such modifications so affecting this Indenture and the Bonds and coupons hereby secured, shall be reduced to a written agreement between the Railroad Company and the Trustee and such agreement together with an original of the written assent of such registered bondholders shall be recorded and filed in the places where this Indenture shall be recorded and filed; and thenceforth, shall be deemed a part of this Indenture, and thereafter the lien of this Indenture, and of the bonds hereby secured, shall be deemed to be, and shall be, subordinate to such new and prior liens created pursuant to such plan, but only to the extent specified in such written agreement.

Registration of bonds for any purpose of this section shall be sufficient, if then or theretofore made and then continuing in any manner permitted by Section 3 of Article Two of this Indenture.

Section 20. No holder of any bond or coupon hereby secured shall have any right to institute any suit, action or proceeding in equity or at law for the foreclosure of this Indenture, or for the execution of any trust hereunder, or for the appointment of a receiver or for any other remedy hereunder, unless such holder previously shall have given the Trustee written notice of default hereunder, and of the continuance thereof, as hereinbefore provided; now unless, also the holders of twenty-five per cent. in amount of the bonds hereby secured, then outstanding, shall have made written request upon the Trustee and shall have afforded it a reasonable opportunity, either to proceed to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in his own name; now, unless also, they shall have offered to the Trustee adequate security and indemnity against the costs, expenses and liabilities to be incurred therein or thereby; nor unless the Trustee shall refuse or neglect to act upon such notice, request and indemnity; and such notification, request and offer of indemnity are hereby declared, in every such case, at the option of the Trustee, to be conditions precedent to the execution of the powers and trusts of this Indenture for the benefit of the bondholders, and to any action or cause of action for foreclosure or for the appointment of a receiver, or for any other remedy hereunder; it being understood and intended that no one or more holders of bonds and interest obligations shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the lien of this Indenture, or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of all holders of such outstanding bonds and interest obligations.

All rights of action under this Indenture, or under any of said bonds, enforceable by the Trustee, may be enforced by the Trustee without the possession of any such bonds or coupons, or the production thereof on the trial or other proceedings relative thereto, and any such suit or proceedings instituted by the Trustee shall be brought in his own name, and any recovery of judgment shall be for the ratable payment of the holders of said bonds and interest obligations.

129 Section 21. Except as herein expressly provided to the contrary, no remedy herein conferred upon or reserved to the Trustee, or to the holders of bonds hereby secured, is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 22. No delay or omission of the Trustee, or of any holder of bonds hereby secured, to exercise any right or power accruing upon any default continuing as aforesaid, shall impair any such right, or power, or shall be construed to be a waiver of any such default, or an acquiescence therein, and every power and remedy given by this Indenture to the Trustee, or to the bondholders, may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the bondholders.

Section 23. The Trustee shall have power to institute and maintain such suits and proceedings as he may deem necessary or expedient to prevent any impairment of the security hereunder by acts of the Railroad Company, or of others, in violation of this Indenture or unlawful, or as the Trustee may deem necessary or expedient to preserve and to protect his interest and the security and interest of the bondholder in respect of the property subject to this Indenture, or in respect of the income, earnings, rents, issues and profits thereof, including power to institute and to maintain suits or proceedings to restrain the enforcement of, or compliance with, or the observance of, any legislative or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with, or observance of, such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the bondholders or of the Trustee; and upon the request of 25% in amount of the holders of the bonds issued hereunder who shall furnish to the Trustee adequate indemnity for its expenses and compensation for its services in the premises, it shall be the duty of the Trustee to proceed as authorized in this section.

Article Five.

130 No recourse under or upon any obligation, covenant or agreement contained in this Indenture, or in any bond or coupon hereby secured, or because of the creation of any indebtedness hereby secured, shall be had against any incorporator, stockholder, officer or director, past, present or future, of the Railroad Company, or of any successor corporation, either directly or through the Railroad Company, by the enforcement of any assessment or penalty or by any legal or equitable proceeding by virtue of any statute, constitution or otherwise; it being expressly agreed and understood that this indenture, and the obligations hereby secured, are solely corporate obligations, and that no personal liability whatever shall attach to, or be incurred by, the incorporators, stockholders, officers or directors, past, present or future of the Railroad

Company or of any successor corporation, or any of them, because of the incurring of the indebtedness hereby authorized, or under or by reason of any of the obligations, covenants or agreements contained in this Indenture, or in any of the bonds or coupons hereby secured, or implied therefrom; and that any and all personal liability of every name and nature of, and any and all rights and claims against every such incorporator, stockholders, officer or director, past, present or future whether arising at common law or in equity, or created by statute or constitution, are hereby expressly released and waived as a condition of, and as part of the consideration for the execution of this Indenture and the issue of the bonds and interest obligations secured hereby.

Article Six.

Section 1. Any demand, request or other instrument required by this indenture to be signed and executed by bondholders, may be in any number of concurrent writings of similar tenor, and may be signed or executed by such bondholders in person or by agent appointed in writing. Proof of the execution of any such demand, request or other instrument, or of the writing appointing any such agent, and of the ownership by any person of coupon bonds transferable by delivery, shall be sufficient for any purpose of this Indenture, if such proof be made in the following manner:

131 The fact and date of the execution by any person of any such demand, request, or other instrument or writing, may be proved by the certificate of any notary public or other officer authorized to take acknowledgment of deeds to be recorded in any State of the United States of America, that the person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness to such execution.

The fact of the holding by any bondholder of coupon bonds transferable by delivery, and the amounts, series and serial numbers of such bonds, and the date of his holding the same, may be proved by a certificate executed by any trust company, bank, bankers or other depository (wherever situated), if such certificate shall be deemed by the Trustee to be satisfactory, showing that at the date therein mentioned such person had on deposit with such depository the bonds described in such certificate. The ownership of registered coupon bonds or of registered bonds without coupons shall be proved by the registers of such bonds, or by a certificate of the registrar thereof.

Section 2. The Railroad Company and the Trustee may deem and may treat the bearer of any coupon bonds hereby secured which shall not at the time be registered as hereinbefore authorized, and the bearer of any coupon for interest on bond, whether such bond shall be registered or not, as the absolute owner of such bond or coupon, as the case may be, for the purpose of receiving payment of any bond or coupon, and for all other purposes, and neither the Railroad Company nor the Trustee shall be affected by any notice to the contrary.

The Railroad Company and the Trustee may devise and treat the person in whose name any registered bond without coupons, issued hereunder, shall be registered upon the books of the Railroad, as hereinabove provided, as the absolute owner of such bond, for the purpose of receiving payment of, or on account of the principal and interest of such bond, and for all other purposes; and may devise and treat the person in whose name any coupon bond shall be so registered as the absolute owner thereof for the purpose of receiving payment of, or on account of, the principal thereof, and for all other purposes, except to receive payment of interest represented by 132 outstanding coupons; however, that in case of any payment of the principal of any registered coupon bond or registered bond without coupons the bond shall be surrendered to the Railroad Company at the time of payment. All such payments so made to any such registered holder for the time being, or upon his order, shall be valid, and, to the extent of the sum or sums so paid, effectual to satisfy and discharge, the liability for moneys payable upon any such bond.

Article Seven.

Section 1. Whenever, in the opinion of the Board of Directors of the Railroad Company, the sale, or exchange of any real property, franchises and property used in connection therewith, now or hereafter subject to the liens of this Indenture, shall have become necessary or useful in the judicious management or maintenance of the business for which the Railroad Company was incorporated, then and in such case it may sell or exchange such property, upon such terms as its Board of Directors may determine, and upon demand of the Railroad Company, it shall be the duty of the Trustee, unless the Railroad Company shall then be in default hereunder, in which case the Trustee in his discretion may decline, to execute suitable instruments releasing the same from the lien and effect of this Indenture without limitations, restrictions and conditions.

Section 2. All moneys received by the Railroad Company for properties released under Section 1 of this Article Seven shall be deposited with the Trustee and may be applied as provided in Article Three hereof or kept on deposit at interest. And any bonds or other securities received by the Railroad Company for properties released as aforesaid shall be deposited with the Trustee and shall be held by him for the further security of the bonds issued and to be issued hereunder; but until default hereunder the interest and income of said bonds or other securities shall be paid to the Railroad Company as hereinbefore provided. Upon request of the Railroad 133 Company, any bonds or other securities so acquired and held by the Trustee shall be released by the Trustee upon delivery to him of a certified copy of resolution of the Board of Directors so authorizing.

Section 3. The Railroad Company shall be permitted to alter, remove, sell or dispose of any buildings, fixtures, machinery, equipment,

elling stock, and other personal property, upon the mortgaged premises which, in the opinion of the Board of Directors of the Railroad Company cannot be advantageously used in the judicious operation and management of the businesses for which the Railroad Company was incorporated, provided always that the Railroad Company shall (and it hereby agrees that in such case it will) replace any buildings, fixtures, machinery, or other appliances removed, sold or otherwise disposed of by acquiring, and subjecting to the lien of this Indenture, or placing upon the mortgaged properties subject to this Indenture, other buildings, fixtures, machinery or other appliances or property equal in value to the value of the property so removed, sold or otherwise disposed of.

Section 4. The Railroad Company may change or make any change in the location, of any of the tracks, lines, wires, poles, power houses, stations, buildings, or other structures or property upon any part of the mortgaged premises, and the Trustee, upon conveyance to him under the terms of this Indenture of the new tracks, wires, poles, power houses, stations, buildings, structures, or property and the premises upon which the same may be erected or imposed or here, shall, at the request of the Railroad Company release from the lien of this Indenture, the tracks, wires, poles, power houses, stations, buildings, structures or property the location of which shall be so changed and the premises on which they are erected, imposed or placed and shall execute and deliver any and all instruments necessary and proper to effect such purpose.

Section 5. The Railroad Company from time to time may make or consent to changes or alterations in or substitution for or of any lease, right of way, franchise or contract that is or shall be subject to this Indenture and in any such event any modified, altered or substituted lease, contract, franchise or right of way herewith shall become bound by and be subject to the terms of this Indenture in the same manner as the lease, right of way, franchise or contract previously existing.

Section 6. The sworn statement of the President, Vice-President or Treasurer of the Railroad Company, and a copy of a resolution of the Board of Directors of the Railroad Company, certified by its Secretary or Assistant Secretary, may be received by the Trustee as sufficient and conclusive evidence of any of the facts mentioned in this Article, and shall be full protection to the Trustee for any action taken by him in the faith thereof, but the Trustee may in his discretion require such further and additional evidence as to him may seem reasonable.

Article Eight.

Section 1. The Trustee shall not be answerable for the default or the misconduct of any agent or attorney appointed in pursuance thereof, if such agent or attorney shall have been selected with reasonable care; nor shall any trustee be responsible for the acts or defaults of any other trustee or trustees or for anything whatever in connec-

tion with this trust, except each for its or his willful misconduct or gross negligence. The Trustee shall not be personally liable for any debts duly contracted by him, or for damages to persons injured, or for salaries or non-fulfillment of contracts, during any period wherein the Trustee shall manage the trust property or premises upon entry or voluntary surrender as aforesaid. The Trustee shall be under no obligation to take any action towards the execution or enforcement of the trusts hereby created, which, in the opinion of the Trustee, shall be likely to involve it in expense or liability, unless one or more of the holders of the bonds hereby secured shall, as often as required by the Trustee, furnish indemnity satisfactory to the Trustee against such expense or liability; nor shall the Trustee be required to take

notice of any default hereunder, and it may for all purposes
135 conclusively assume that there has been no default hereunder unless and until notified in writing of such default by the holders of at least ten per cent in amount of the bonds hereby secured and then outstanding nor shall the Trustee be required to take any action in respect of any default unless requested to take action in respect thereof by a writing signed by the holders of not less than twenty-five per cent in amount of the bonds hereby secured, and then outstanding, nor unless tendered indemnity as aforesaid. The foregoing provisions of this section are intended only for the protection of the Trustee and shall not be construed to affect any discretion or power by any provision of this indenture given to the Trustee to determine whether or not he shall take action in respect of any default, or any power of discretion of the Trustee to take action in respect of any default, without such notice or request from bondholders, or to affect any other discretion or power given to the Trustee. The Trustee shall not be responsible for the recording of this Indenture and shall not be required to file the same as a chattel mortgage and the Trustee may certify and deliver bonds secured hereunder prior to the recording or filing hereof.

Any action by the Trustee upon the request of any person who at the time is the owner of any such bond or bonds shall be conclusive and binding upon all future owners of the same bond or bonds.

The Trustee shall incur no liability to anybody in acting upon any notice, request, consent, certificate, bond, document or paper believed by it to be genuine and to have been signed by the proper person. The Trustee may receive a certificate under the corporate seal of the Railroad Company, signed by the Secretary, or Assistant Secretary, of the Railroad, as sufficient evidence of the due adoption of any resolution by the Board of Directors of the Railroad Company.

The Trustee shall be reimbursed for, and be indemnified against, any liability or damages which may be sustained by him in the premises. The Trustee shall have, secured hereby upon the property covered by this Indenture, a lien prior to that of any bond issued under this Indenture, for his compensation and expenses, and

136 also for any liability or damage by it sustained in the premises.

The Trustee shall not be responsible in any manner whatsoever for the validity hereof, or for the amount or the extent of the security afforded by the property covered hereby or for the recitals

herein or in said bonds contained, all such recitals being and to be taken as the statements of the Railroad Company; nor shall he be accountable for the use of any bonds certified and delivered by the Trustee hereunder or for the application of the proceeds of such bonds.

The Trustee shall be entitled to reasonable compensation for all services rendered by him in the execution of the trusts hereby created, and the Railroad Company agrees to pay such compensation as well as all expenses necessarily incurred or disbursed by the Trustee hereunder. In case of non-payment of any such compensation or expenses, the amount unpaid shall be a lien upon the mortgaged premises prior to the lien of the bonds secured by this Indenture.

Any money held by the Trustee under any provision of this Indenture may be treated by it as on general deposit. The Trustee may acquire or hold bonds and coupons hereby secured with the same rights which he would have if he were not a Trustee hereunder.

Section 2. The Trustee, or any trustees or trustee hereafter appointed, may resign and may be discharged from the trusts created by this Indenture by giving to the Railroad Company and to the bondholders notice by publication of such resignation, specifying a date when such resignation shall take effect which notice shall be published, at least once on a day not less than thirty days nor more than sixty days prior to the date so specified, in a newspaper at that time published in the City of Jacksonville, State of Florida, and in a newspaper at that time published in the Borough of Manhattan, City of New York. Said notice shall also be mailed to the Railroad Company at its office or agency in the City of Ocala, Florida. Such resignation shall take effect on the date specified in such notice, unless

previously a successor trustee shall have been appointed as
137 hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of a successor trustee.

Any trustee or trustees hereunder may be removed at any time by an instrument in writing under the hands of the holders of a majority in amount of the bonds hereby secured and then outstanding.

Section 3. In case at any time the Trustee, or any successor trustee, shall resign or shall be removed or otherwise shall become incapable of a successor or successors may be appointed by the holders of a majority in the amount of the bonds hereby secured then outstanding, by an instrument or concurrent instruments signed by such bondholders or their attorneys-in-fact duly authorized; provided, nevertheless, and it is hereby agreed and declared that, in case because of the happening of any of the events herein specified at any time there shall be a vacancy in the office of Trustee hereunder the Railroad Company, by an instrument executed by order of its Board of Directors, may appoint a trustee which shall act until a new trustee shall be appointed by the bondholders as herein authorized. Thereupon, the Railroad Company shall publish notice of such appointment once a week for six successive weeks in a newspaper published in the City of Jacksonville, State of Florida, and in a newspaper published in the Borough of Manhattan, City of New York, but any new trustee so

appointed by the Railroad Company shall immediately and without further act be superseded by a trustee appointed in the manner above provided by the holders of a majority in amount of the bonds hereby secured, if such appointment by bondholders be made prior to the expiration of six months after such publication of notice.

Any such new trustee appointed hereunder shall execute, acknowledge and deliver to the Railroad Company an instrument accepting such appointment hereunder, and thereupon such successor trustee, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers, trusts, duties and obligations of his predecessor in the trust hereunder, with like effect as if originally named as trustee herein but, nevertheless, on the written request of the Railroad Company or of the successor trustee, the trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the trustee so ceasing to act, and shall duly assign, transfer and deliver his interests in any bonds or other property and moneys subject to this Indenture, to the successor trustee so appointed in his place; and, upon request of any such successor trustee, the Railroad Company shall make, execute, acknowledge and deliver any and all deeds, conveyances or other instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such estates, properties, rights, powers and duties.

Section 4. For the purposes of Section 2 and Section 3 of this Article, the fact of the holding of bonds by any bondholder, and the amount and serial numbers of such bonds, and the date of his holding the same, may be evidenced either in the manner specified in Article Six of this Indenture, or at the option of any bondholder, by affidavit of the bondholder in the case of coupon bonds transferable by delivery, and by a certificate of the bond registrar in the case of registered coupon bonds and registered bonds without coupons.

Section 5. If at any time or times, in order to conform to any law of any locality in which the Railroad Company may hold property, the Railroad Company shall so request, the Railroad Company and the Trustee shall unite in the execution, delivery and performance of all instruments and agreements necessary or proper to appoint a trust Company or one or more persons approved by the Trustee, to act either as co-trustee or as co-trustees, for any purpose of this Indenture, of all or any of the property subject to this Indenture jointly with the Trustee originally named herein or his successors, or to act as separate trustee or trustees, of any of such property; but such additional or separate trustee shall have only such powers as may be necessary to conform to such law or laws.

Article Nine.

Section 1. Until some default shall have been made in the due and punctual payment of the interest or of the principal of the bonds at any time outstanding and hereby secured, or

of some part of such interest or principal, or in the due and punctual performance and observance of some covenant or condition hereof obligatory upon the Railroad Company, and, until such default shall have been continued beyond the period of grace, if any, herein provided in respect thereof, or until one or more of the other defaults in Section 2 of Article Four shall have occurred or until the Railroad Company voluntarily shall have surrendered possession to the Trustee as herein permitted, the Railroad Company, its successors and assigns, shall be suffered and permitted to retain actual possession of all the property subject to this Indenture (other than bonds, promissory obligations, certificates of stock, certificates of interest or cash, held by the Trustee hereunder) to manage, operate and use the same and every part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the earnings, income, rents, issues and profits thereof.

Section 2. If, when the bonds hereby secured shall have become due and payable, the Railroad Company shall well and truly pay, or cause to be paid, the whole amount of the principal and interest due upon all of the bonds and coupons hereby secured, then outstanding, or shall provide for the payment of such bonds and coupons by depositing with the Trustee hereunder the entire amount due thereon for principal and interest, and also shall pay or cause to be paid, all other sums payable hereunder by the Railroad Company, and shall well and truly keep and perform all the things herein required to be kept and performed by it according to the true intent and meaning of this Indenture, then and thereupon all property, rights and interests hereby conveyed or assigned or pledged shall revert to the Railroad Company, and the estate, rights, title and interest of the Trustee shall thereupon cease, determine and become void; and the Trustee in such case, on demand of the Railroad Company, and at its cost and expense, shall enter satisfaction of this Indenture upon the record; otherwise the same shall be, continue and remain in full force and virtue.

Section 1. All the covenants, stipulations, promises and agreements in this Indenture contained, by or in behalf of the Railroad Company, shall bind its successors and assigns, whether so expressed or not.

Section 2. Nothing contained in this indenture or in any bond hereby secured, shall prevent any consolidation or merger of the Railroad Company with any other corporation, or any conveyance and transfer (subject to the continuing lien of this Indenture and to all the provisions thereof), of all the property subject to this Indenture as an entirety to a corporation at that time existing under and by virtue of the laws of any state or states, or of the United States, and empowered to acquire the same; provided, however, that such consolidation, and at its cost and expense, shall not impair the lien or priority of this In-

denture, or any of the rights or powers of the Trustee or of the bondholders hereunder, and that upon such consolidation, merger or sale the due and punctual payment of the principal and interest of all of the bonds hereby secured, according to their tenor and the due and punctual performance and observance of all the covenants and conditions of this Indenture, shall be assumed by the corporation formed by such consolidation or merger, or purchasing as aforesaid.

Section 3. In case, pursuant to Section 2 of this Article, the Railroad Company shall be consolidated or merged with any other corporation, or shall sell, convey and transfer (subject to this Indenture), all the property covered by this Indenture, as an entirety as aforesaid, the successor corporation formed by such consolidation, or into which the Railroad Company shall have been merged, or which shall have purchased and received a conveyance and transfer, as aforesaid, upon executing and causing to be recorded and filed an instrument satisfactory to the Trustee whereby such successor corporation shall assume the due and punctual payment of the principal and interest of the bonds hereby secured, and the performance and observance of all the covenants and conditions of this

Indenture—shall succeed to and be substituted for the Railroad Company, party of the first part hereto, with the same effect as if it had been named herein as such party of the first part; and such successor corporation thereupon may cause to be signed, and may issue, either in its own name or in the name of the Railroad Company, any or all of such bonds which theretofore shall not have been signed by the Railroad Company and delivered to the Trustee, and upon the order of said successor corporation, in lieu of the Railroad Company, and subject to all the terms, conditions and restrictions herein prescribed, the Trustee shall certify and shall deliver any such bonds which previously shall have been signed and delivered by the officers of the Railroad Company to the Trustee for certification, and any of such bonds which such successor corporation thereafter shall cause to be signed and delivered to the Trustee for that purpose. All the bonds so issued shall, in all respects, have the same legal rank and security as the bonds theretofore or thereafter issued in accordance with the terms of this Indenture, as though all of said bonds had been issued at the date of the execution hereof.

Section 4. For every purpose of this Indenture, including the execution, issue and use of any and all bonds hereby secured, the terms "Railroad Company" and "Ocklawaha Valley Railroad Company" include and mean not only the party of the first part hereto, but also any such successor corporation formed by consolidation or otherwise under the laws of Florida or of any State or States or of the United States. Every such Successor or purchasing corporation shall possess, and from time to time may exercise, each and every right and power hereunder of the Railroad Company, in its name or otherwise.

Section 5. Any act or proceeding, by any provision of this Indenture authorized or required to be done or performed by any board or officer of the Railroad Company, shall and may be done and performed with like force and effect by the like board or officer of any corporation that shall at the time be such lawful sole successor or purchaser of the Railroad Company.

Section 6. Nevertheless, before the exercise of the powers conferred by this Article, the Railroad Company, by an instrument in writing executed by authority of two-thirds of its Board of Directors and delivered to the Trustee may surrender any of the powers reserved to the Railroad Company or to such successor corporation; and thereupon such power so surrendered shall terminate.

Section 7. The Word "Trustee" means the Trustee for the time being, whether original or successor; the words "Trustee", "bond", "Bondholder", shall include the plural as well as the singular number, unless otherwise expressly indicated. The word "coupons" refers to the interest coupons attached to the coupon bonds issued hereunder. The word "person", used with reference to a bondholder, shall include associations or corporations owning any such bonds.

The Trustee for himself and his successors and assigns, hereby accepts the trusts in this indenture declared and provided, upon the terms and conditions hereinbefore set forth.

For the purposes of facilitating the record hereof, this indenture has been executed in three counterparts, each of which shall be and shall be taken to be an original, and all collectively but one instrument.

I, witness whereof, Ocklawaha Valley Railroad Company, party hereto of the first part, has caused this indenture to be signed and acknowledged or proved by its President or Vice-President, and its corporate seal to be hereunto affixed, and the same to be attested by the signature of the Secretary; and as the party of the second part, William S. Hood, Trustee herein named, has hereunto set his hand and seal as of the day and year first above written.

OCKLAWAHA VALLEY RAILROAD
COMPANY,

By CHARLES A. MARSHALL,

President.

WILLIAM S. HOOD,

Trustee.

[CORPORATE SEAL.]

Attest:

G. M. P. MURPHY,

Witness:

ROBERT WALMSLEY,

STATE OF NEW YORK,
County of New York, ss:

Be it remembered that on this day there personally appeared before me the undersigned Notary Public, Charles A. Marshall 143 to be personally well known and known to me to be the individual who as President of Ocklawaha Valley Railroad Company did execute the foregoing instrument, and did acknowledge that as such President he did execute the same in behalf of said Ocklawaha Valley Railroad Co. as and for its corporate deed, and that the seal annexed thereto was annexed by order of the Board of Directors.

Witness my hand and official seal this 20th day of July 1915.

JOHN AUEN,

[NOTARY SEAL.]

Notary Public, Kings Co., No. 53.

Certificate filed in New York County.

New York County No. 63.

New York Register No. 6,121.

No. 20,000.

STATE OF NEW YORK,
County of New York, ss:

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify, that John Auen whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition or proof and acknowledgment, a Notary Public, acting in and for the said County, duly commissioned and sworn, and authorized by the laws of said State to take depositions and also acknowledgments and proofs of Deeds, or conveyances for land, tenements or hereditaments in said State of New York. That there is on file in the Clerk's office of the County of New York a certified copy of his appointment and qualification as Notary Public of the County of Kings with his autograph signature. And further, that I am well acquainted with the handwriting of such Notary Public and verily believe that the signature to said deposition, or certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court and County this 21 day of July 1915.

[CLERK'S SEAL.]

WM. F. SCHNEIDER,

Clerk.

(Ten cent revenue stamp cancelled.)

STATE OF NEW YORK,
County of New York, ss:

144 I hereby certify that on this 20th day of July, 1915, before me, a Notary Public of the above State and County, personally appeared William S. Hood, to me known and known to me to be the person described in and who executed the foregoing instrument, and duly acknowledged to me that he executed the same for the uses and purposes therein mentioned.

Witness my hand and official seal this 20th day of July, 1915.

JOHN AUEN,

[NOTARY SEAL.]

Notary Public, Kings Co., No. 53.

Certificate filed in New York County.

New York County No. 63.

New York Register No. 6,121.

No. 19,999.

STATE OF NEW YORK,
County of New York, ss:

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, do hereby certify, that John Auen whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition or proof and acknowledgment, a Notary Public, acting in and for the said County, duly commissioned and sworn, and authorized by the laws of said State to take depositions and also acknowledgments and proofs of Deeds, or conveyances for land, tenements or hereditaments in said State of New York. That there is on file in the Clerk's Office of the County of New York, a certified copy of his appointment and qualification as Notary Public of the County of Kings with his autograph signature. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition, or certificate of proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court and County this 21 day of July 1915.

[CLERK'S SEAL.]

WM. F. SCHNEIDER,

Clerk.

(Ten Cent revenue Stamp cancelled.)

145 On the 11th day of December, 1917, the complainant filed
Lis Pendens as follows:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and
for Marion County. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, Organ-
ized under the Laws of Florida, Defendant.

Lis Pendens.

Notice is hereby given that on the 10th day of December, 1917,
the above named complainant instituted a suit in the above styled
court against the above named defendant in which is involved cer-
tain property situated in the counties of Marion and Putnam, State
of Florida, to-wit:

Lots one and four of Block sixty-four, old Survey of Ocala and that
part of $8\frac{1}{2}$ of Lot 3 in said Block not conveyed by Julia S. Haisly
and husband to Harriet M. Townsend and Julia Wesselitsky by deed
of date Feb. 13, 1900, recorded in deed book 107, page 158, and in
deed book 113, page 443, of the public records of Marion County,
Florida, which said part of lot 3 is estimated as thirteen feet more
or less off the eastern side of said $8\frac{1}{2}$ of Lot 3, in the city of Ocala,
Marion County, Florida;

Also, the line of railroad extending from the terminus of the de-
fendant company in said city of Ocala, a distance of six miles to a
point known as "Silver Springs" in the county of Marion, as de-
scribed and defined in and subject to the terms of that certain lease
and agreement, dated December 14, 1909, between the Seaboard Air
Line Railroad Company and the Ocala Northern Railroad Company.

The line of railroad extending from Silver Springs to Fort McCoy,
in the County of Marion, a distance of 12.3 miles; from Fort
146 McCoy to the City of Palatka, in Putnam County, a distance
of 32.5 miles; passing through the towns of Bay Lake and
Orange Springs, in Marion County and passing through Marion
County into Putnam County at or near Orange Creek, and thence
in Putnam County by way of the towns of Kenwood, Rodman, and
Kenilworth to the City of Palatka, and all extensions thereof.

The line of railroad extending from the terminus of the defend-
ant company's line in the city of Palatka, a distance of one and one-
half miles, to the terminus of the defendant company's line in the
said city of Palatka, leased from the Georgia, Southern & Florida
Railway Company.

The right of way of the defendant company one hundred feet in
width from Silver Springs to the City of Palatka;

All and singular the franchises, right, privileges and immu-
nities appendant or appurtenant to or used in connection with the
said lines of the defendant company and any and all extensions

and branches thereof, together with all the reversions, remainders, rents, income and profits thereof.

All rights of way, railroad tracks, depots, buildings, power houses, shops grounds, real estate, terminal properties, switches, transmission lines, machines and machinery, locomotives, tenders, cars and other rolling stock and equipment, furniture, tools, implements, appendages and appurtenances to or used in connection with such lines of railroad in any manner whatsoever, now belonging to or in the possession of the company, constructed or provided for use upon or in connection with or by way of additions to or extensions of said lines of railroad, and all the reversions, remainders, revenues, rents, income and profits thereof.

Any and all lines of railway, roadbeds, extensions and branches, sidings, switches, and turnouts, superstructures, over-head
147 electrical constructions, all power and other plants, water rights, transmission lines, all tools, wires, cables, telegraph and telephone lines, all terminal properties, stations, sub-stations, docks, and wharves, yards, car-houses, machine shops, offices, buildings, structures and lands, all bridges, dams, boats, ferries, cars, motors and rolling stock, all rights of way and all dynamos and converters, transformers, generators, switch-boards, arresters, circuit breakers, meters, water wheels, equipment, machinery, tools, implements, apparatus and appliances, all replacements, renewals, additions, improvements and betterments, all fixtures, supplies, furniture, chattels, all corporate rights, privileges and franchises, immunities, easements, tenements, hereditaments and appurtenances, reversions and remainders, all contract rights and rights under agreements and all leases, leasehold rights and trackage arrangements, all patents, patent rights, inventions, processes, trade-marks, and all such other such privileges and rents, all tolls, rents, revenues, issue- and profits, and all the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the Railroad Company, in and to the said property and every part thereof with the appurtenances and all other property appurtenant or appendant to said line of railroad.

And all and singular the lands, rights, powers, property, privileges and franchises of the railroad of the defendant described or referred to in that certain trust deed of date the 1st day of July, 1915, executed by Ocklawaha Valley Railroad Company in favor of William S. Hood, as Trustee, which trust deed is recorded in mortgage book 49 on pages 1 to 32 inclusive, of the public records of Marion County, Florida.

That the relief sought as to said property above described is the foreclosure of the certain trust deed above mentioned, the appointment of a receiver pending such foreclosure, the entry of
148 a deficiency decreed against the said defendant and general relief.

WILLIAM S. HOOD,
As Trustee, Complainant.
By ELDON BISBEE,
HOCKER & MARTIN,
His Solicitors.

On December 11th, 1917, the defendant filed its answer as follows:

149 In the Circuit Court of Marion County, Florida. In Chancery.

WILLIAM S. HOOD, Trustee, Complainant.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Florida Corporation,
Defendant.

Answer of the Defendant to the Bill of Complaint.

Now comes the defendant and for answer to the Complainant's bill or so much thereof as it is advised is necessary, answering says:

That this defendant admits all of the allegations of the first paragraph of complainant's bill; admits the execution of the said trust deed referred to as Exhibit "A" attached to said bill, and admits the issuance and the delivery of the said temporary bond numbered "One" for \$300,000.00, dated July 1st, 1915, drawing interest at the rate of 5 per cent. per annum payable semi-annually, and admits that no part of the principal or interest upon said \$300,000.00 temporary bond has been paid, and that this defendant defaulted in the payment of the semi-annual interest on said bond due January 1st, 1916, and also the semi-annual interest due on said bond on July 1st, 1916, and also defaulted in the payment of the semi-annual interest upon said bond due January 1st, 1917, and July 1st, 1917, and that it is still in default in the payment of said interest due at each of the periods above mentioned and that all of said interest remains due and wholly unpaid.

150 This defendant admits all the allegations of the second paragraph of complainant's bill.

This defendant admits all the allegations of the third and fourth paragraphs of complainant's bill.

This defendant admits all of the allegations contained in the fifth paragraph of complainant's bill except that this defendant says that it is indebted to other persons, firms or corporations upon obligations not mentioned in complainant's bill and not secured by said Exhibit "A".

This defendant admits the allegations contained in the sixth, seventh and eighth paragraphs of complainant's bill.

J. V. WALTON,

Solicitor for the Defendant.

OCKLAWAHA VALLEY RAILROAD COMPANY,

By S. P. HOLLINRAKE,

Vice President. [CORPORATE SEAL.]

STATE OF FLORIDA,
County of Marion:

Before me, the undersigned officer, personally appeared S. P. Hollinrake who being by me first duly sworn deposes and says that he is Vice-president of the Ocklawaha Valley Railroad Company, the defendant named in the foregoing suit, that he has read the statements contained in the bill of complaint filed in this cause and has also read the foregoing answer and that the statements contained in the foregoing answer are true.

S. P. HOLLINRAKE.

Sworn to and subscribed before me this the 11th day of December, 1917.

MABEL JOHNSON,
Notary Public. [NOTARY SEAL.]

151 On December 11th, 1917, the Court entered the following order:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation,
Defendant.

This cause came on this day to be heard upon the application of complainant for appointment of a Receiver, the respective parties being represented at said hearing by their solicitors of record, same having been argued by counsel, and the court being advised in the premises, it is

Ordered and decreed that upon giving a bond to be approved by the Clerk of this Court in the sum of One Thousand Dollars, with two sureties, or with a surety company authorized to do business in Florida, as surety, payable to the State of Florida, as required by statute, conditioned for the payment over of all moneys which may come into his hands as Receiver and for the due performance of his duties as such as the court may direct, S. P. Hollinrake be and he is hereby appointed Receiver of all of the property of the defendant herein, described in the trust deed attached to the bill of complaint, and that the said receiver do take charge of all and singular the property mentioned in the bill of complaint in this cause.

Done and ordered at Chambers at Ocala, Florida, this December 11th, 1917.

W. S. BULLOCK,
Judge.

152 On December 11th, 1917, the complainant filed the following affidavit:

In the Circuit Court of Marion County, Florida. In Chancery.

WILLIAM S. HOOD, Trustee, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation,
Defendant.

STATE OF FLORIDA,

County of Marion:

Before me the undersigned officer, personally appeared William Hocker, who being by me first duly sworn deposes and says that he is one of the attorneys for the complainant in the above styled suit; that affiant is acquainted with the property involved in the said suit, consisting of a line of railroad from Silver Springs, Florida, to a point near Palatka, Florida, including certain buildings, structures, locomotives, coaches, supplies, etc., used in the operation of said railroad and that the said Ocklawaha Valley Railroad Company is insolvent, and has abandoned the operation of trains upon said line of railroad; that the movable property and other property belonging to said railroad and involved in this suit needs to be cared for by some responsible person pending this litigation, and is in danger of being destroyed by trespassers or fires, and the same is in constant need of the oversight and care of some responsible person; that the said Ocklawaha Valley Railroad Company is without funds and that unless a receiver for said property is appointed the same may be left without care and attention of any proper person and great loss and injury may result in consequence
153 of such lack of care.

WM. HOCKER.

Sworn to and subscribed before me this the 11th day of December, 1917.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

On December 11th, 1917, the complainant filed the following motion:

In the Circuit Court of Marion County, Florida. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, Defendant.

Comes now the complainant in said cause and moves the court to enter an order herein appointing a Receiver to take charge of all

property of the defendant and care for same as prayed for in complainant's bill.

HICKER & MARTIN,
Solicitors for Complainant.

We waive notice of hearing of above motion this 11th day of December, 1917.

OCKLAWAHA VALLEY RAILROAD COMPANY.
By **S. P. HOLLINRAKE,**
General Manager.

On December 20th, 1917, the defendant filed answer to amended bill as follows:

[5] In the Circuit Court of Marion County, Florida. In
Chancery.

WILLIAM S. HOOD, as Trustee, Complainant.
vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendant.

Now comes the defendant Ocklawaha Valley Railroad Company and for answer to the amendment to the complainant's bill answering says:

This defendant admits all the allegations of said amendment and admits that there is actually due and owing from this defendant to the said Assets Realization Company for moneys advanced to it by the said Assets Realization Company prior to November 12th, 1917, the aggregate sum, \$334,974.57, including interest thereon, and that since November 12th, 1917, other advances have been made by said Assets Realization Company to this defendant, the exact amount of which is unknown.

J. V. WALTON,
Solicitor for the Defendant.

STATE OF FLORIDA,
County of Marion:

Before me the undersigned officer, personally appeared S. P. Hollinrake who being by me first duly sworn deposes and says that he has read the amendment to the original bill filed in the above styled cause, to which the foregoing is an answer, that he has read the following answer and that the statements contained in said answer are true.

S. P. HOLLINRAKE.

Sworn to and subscribed before me this the 20th day of December, 1917.

MABEL JOHNSON,
Notary Public. [NOTARY SEAL.]

155 In the Circuit Court of Marion County, Florida. In Chancery.

WILLIAM S. HORN, as Trustee, Complainant.

VS.

OKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendant.

The defendant hereby waives the right to take testimony in said cause and consents that the same may be finally heard and disposed of by the Court upon the bill and answer thereto and the amendment to said bill and the answer to same, without notice to the defendant, and the defendant waives the right to file counter-affidavits or other proofs with respect to the compensation which may be allowed to complainant's solicitors or to the trustee in the above cause.

J. V. WALTON,

Solicitor for the Defendant.

156 On December 29th, 1917, the complainant filed the following affidavits:

STATE OF FLORIDA.

County of Marion.

Before the undersigned authority personally came J. V. Tarver, who being by me first duly sworn deposes and says that he is the Auditor for the Oklawaha Valley Railroad Company which position he has held ever since said road began operation, about April, 1915, and that the said road was first constructed by E. P. Rentz and sold to the Ocala Northern Railroad Company about the latter part of 1909; that said company was in the employ of E. P. Rentz and the said Ocala Northern Railroad Company as Auditor, and continued as such auditor during the time that the said Ocala Northern Railroad Company was in the hands of a receiver, and has at all times been such auditor since the said railroad passed to the said Oklawaha Valley Railroad Company; that the original cost of construction of said road was more than four hundred thousand dollars and according to the best recollection of said auditor amounted to something over Five Hundred Thousand Dollars; that the said railroad has never paid any interest whatever on the cost of construction either to the said Rentz or to the said Ocala Northern Railroad Company or to the said Oklawaha Valley Railroad Company; that said auditor does not not recollect the exact figures with reference to the receipts and expenditures in connection with the operation of said road during all of the period covered by this affidavit, and that it is possible that said railroad during the height of the saw-mill business of the said E. P. Rentz may have paid something over operating expenses but that if so, such condition did not continue for more than a year and said road has never paid to any of its owners any interest on the cost of

construction; that the said road lost money while it was in the hands of a receiver for a period of about two years immediately prior to April, 1915, that hereto attached is a correct statement of the earnings and expenses of the said road since April, 1915, to October 31, 1917, which statement is hereto attached marked Exhibit "A" and shows a net loss during said period of \$35,531.51 and that at no time has said road paid any interest upon its bonded indebtedness representing the cost of same to the present owners.

J. V. TARVER.

Sworn to and subscribed before me this 28th day of November, 1917.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

Deficit of the Oklawaha Valley Railroad Company Showing Gross Earnings and Expenses from April 15th, 1915, to October 31st, 1917.

	Earnings.	Expenses.	Deficit.
From April 15th, 1915, to December 31, 1915,	31,940.36	36,941.86	5,001.50
From January 1st, 1916, to December 31st, 1916	38,588.52	50,591.52	12,003.00
From January 1st, 1917, to October 31st, 1917	32,142.08	50,629.09	18,527.01
Total	102,670.96	138,202.47	35,531.51

STATE OF FLORIDA,
Marion County:

Before me, the undersigned officer, personally appeared S. P. Hollinsake, who being by me first duly sworn deposes and says that he is Vice President and General Manager of the Oklawaha Valley Railroad Company and has been in charge of the operation of said railroad since about January, 1911, at which time it was owned by the Ocala Northern Railroad Company; that a receivership followed upon the ownership of the said railroad by the Ocala Northern Railroad Company, which receivership continued for about two years, during which time affiant was also in charge of the operation of said railroad and has so continued up until now, under the ownership by the Oklawaha Valley Railroad Company; that affiant is familiar with the facts contained in the affidavit of J. V. Tarver and knows the statements made in said affidavit to be true as per the affidavit of the said Tarver hereto attached; that the only sources from which the Oklawaha Valley Railroad Company have been able to borrow any money in the past have been through the Assets Realization Company, which company keeps an office in New York City, and The Munroe & Chambliss National Bank in Ocala, Florida; that both of said companies last mentioned have refused any further credit to the said Oklawaha Valley Railroad Company; that the said railroad company and its

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officers in charge of the operation of the present equipment of said road are obliged almost daily to incur risk of prosecution for violation of the rules of the Interstate Commerce Commission as almost all of its trains carry some Interstate business; that the said railroad has recently been sued and fined in the Federal Court for violation of such rules, yet those in charge of the management of the said road were hardly able to avert incurring such penalty and that the inspectors for the Interstate Commerce Commission have repeatedly severely criticized the equipment of said road; that in order to reach its termini the said Ocklawaha Valley Railroad Company is obliged to run over the tracks of the Atlantic Coast Line Railroad Company at Palatka and over the tracks of the Seaboard Air Line Railroad Company from Silver Springs, Florida, in order to get into Ocala, with both of which roads the said Ocklawaha Valley Railroad Company is on contract, and that this circumstance, together with the fact that the said road is subject to the control of the Interstate Commerce Commission and the rules promulgated by said

159 commission, makes it imperatively necessary that the said road shall be operated, if operated at all, in the regular way, apart from any indulgences or special concessions that the said road might obtain from the Florida Railroad Commission, and that the said Florida Railroad Commission has never been willing to grant any such indulgences or to make any special rules applicable only to short line railroads, and has repeatedly refused to do so, and promulgates and keeps in force the same rules and regulations as are applicable to large railroads; that since the injunction order was entered in this cause affiant has made an effort to borrow money with which to operate said road and that affiant's efforts have met with no success.

S. P. HOLLINRAKE.

Sworn to and subscribed before me this, the 28th day of November, 1917.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

STATE OF FLORIDA,
County of Marion:

Before the undersigned authority personally appeared M. R. Atkinson, who being by me first duly sworn deposes and says that he occupies at present the position of Road Master of the Ocklawaha Valley Railroad Company and is well acquainted with the main line track of said railroad from Silver Springs to a point near Palatka, and in connection with his duties as such Road Master has carefully examined the condition of said road-bed of the said main line track and the trestles over which same passes; that the timbers in many of the trestles under said main-line track are nearly rotted out and several of said trestles are in a dangerous condition and nearly all of them need repair in order to make them safe; that over the entire length of said line there are rotted cross-ties, some of which are

completely rotten and in many instances the decay has proceeded so far that the spikes can be pulled out with the fingers of the hand, and that in the opinion of affiant at least fifteen Thousand (\$15,000.00) Dollars should be spent immediately upon the trestles and in repairing the cross-ties under said road-bed and in the opinion of affiant it will probably cost more than said sum.

M. R. ATKINSON.

Sworn to and subscribed before me this the 28th day of November, 1917.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

STATE OF FLORIDA,
County of Marion:

Before me, the undersigned officer, personally appeared M. L. Horn, who being by me first duly sworn, deposes and says that he is a resident of the city of Pittsburgh, Pennsylvania; that during the last eighteen years affiant has been engaged in the business of inspecting and valuing railroads for sellers and purchasers of such roads, both electrical and steam railroads, and that affiant is now actively engaged in such business; that in connection with affiant's business he has recently inspected the J. R. & T. Bunn Railroad, Fairfax, Georgia, 18 miles long; the Carter's Road, Carters, Florida, 22 miles long; the E. E. West Company road, Ellaville, Florida, 19 miles long; the Stuart Lumber Co., Brinson, Georgia, 26 miles long, the Lane Construction Co., Montgomery, Alabama, 24 miles long, the Tidewater and Western Railroad in Virginia, 57 miles long, and numerous other small and large railroads throughout the United States; that affiant has on two occasions inspected the property of the Ocklawaha Valley Railroad Company and within the last few days has examined the main line track of said railroad and the rolling stock; that in the opinion of affiant the expenditure of \$75,000.00 within the next twelve months would be necessary upon the rolling stock and the road-bed of the said Ocklawaha Valley Railroad, in order to properly and safely operate one train service per day each way over the said line of road; that the track of the main line of said road and several of its bridges are in immediate need of repairs and all of said track and nearly all of said bridges should be repaired at once in order to make same safe for the operation of trains; that affiant has no personal knowledge of the amount of traffic handled by said road but the improvements above mentioned should be made in order to handle even a minimum amount of traffic and in order to operate with safety, train service now being conducted on said road. That all of the rolling stock of the said railroad is antiquated and in very bad repair and that according to M. C. & B. requirements all of the said rolling stock should be immediately overhauled and repaired, which would entail a very considerable expense, and it would probably be as cheap and better business to buy new modern rolling stock; that the locomotives in use are very old and the boilers are worn out; that it is wholly imprac-

tical to rely upon said locomotives as the means for transporting any regular train service over said road, according to the Federal requirements, and that the said locomotives are wholly unsuited for use in regular train service and that the expense of keeping the same in repair, even if they could be kept in operation, would be inordinately heavy and the same is true of the coaches now in use; that affiant has no interest whatever in the Ocklawaha Valley Railroad Company, has never been in its employ, and never transacted any business with said Railroad Company.

M. L. HORN.

Sworn to and subscribed before me this the 28th day of November 1917.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

STATE OF FLORIDA,
County of Marion:

Before me, the undersigned officer, personally appeared A. L. Calhoun, who being by me first duly sworn, deposes and says that he is at present in the employ of the Ocklawaha Valley Railroad Company, as locomotive engineer, that affiant is the only locomotive engineer in the employ of said railroad and has been operating trains over said railroad prior to the acquisition of said railroad, since April, 1915; that affiant is well acquainted with and has operated the three locomotives that belong to the said Ocklawaha Valley Railroad Company and that in the opinion of affiant two of said locomotives are probably over thirty years old and that said locomotives are so old and worn that all of them are in constant need of repair in order to keep same in operation; that in the opinion of affiant the wear and tare on said locomotives has proceeded to a point where it will be impracticable to rely on said locomotives as the means of conveying even one train a day over the said line of railroad; that it is difficult to get repairs made on said locomotives quickly and affiant does not believe that it will be practicable to keep any one of said locomotives in commission at all times for the purpose of operating said road for any length of time hereafter, except only by unusual expense and through procuring a special supply of mechanics, which expense in the opinion of affiant would not be justified by the value of said locomotives; that in the opinion of affiant it would take at least Five Thousand Dollars a year to keep said three locomotives in a condition to operate at all times and that when one of said locomotives is in the shop for repairs several months will necessarily be consumed in making said repairs.

A. L. CALHOUN.

Sworn to and subscribed before me this the 28th day of November 1917.

[N. P. SEAL.]

J. M. McDONALD,
Notary Public.

Notary Public, State of Florida.
My commission expires July 12, 1921.

On December 20th, 1917, the complainant filed amended bill of complaint as follows:

163 In the Circuit Court of the Fifth Judicial Circuit of Florida
in and for Marion County. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Florida Corporation,
etc., Defendant.

Now comes the Complainant, leave of Court being first had and obtained, and amends this his bill of complaint by adding after the fifth paragraph of said bill the following:

1st. That since the first day of July, 1915, the Assets Realization Company, a corporation under the laws of the State of New Jersey, has advanced to the said defendant the sums of money mentioned in exhibit "C" hereto attached, for the purpose of operating the railroad of the defendant, and that said exhibit "C" represents the true dates and amounts of said advances under said dates, as is represented by the promissory notes issued by the defendant and delivered to the said Assets Realization Company, and now held by said Assets Realization Company, aggregating the sum of \$36,552.94, and that the interest due upon said amounts mentioned in exhibit "C" is \$1,682.00, and that in and by the terms of said promissory note in the sum of \$258,601.51, it was stipulated and agreed by the said defendant that the said Assets Realization Company, who held the said \$300,000 temporary bond as collateral security for the said note for \$258,601.51, representing the purchase price of said property, and also should hold said temporary bond as collateral security for all other advances; that 164 the said sum of \$36,552.94 represents all advances made by the said Assets Realization Company to the said defendant in addition to the said \$258,601.51 up to the 12th day of November, 1917, and that the aggregate amount now due as principal and interest upon the said note mentioned in exhibit "C" and the said \$258,601.51 note is \$334,974.57, and that other advances have been made by the said Assets Realization Company to the said defendant, the exact amount of which is unknown to your orator.

That exhibit "A" attached to the original bill, was duly filed for record in Marion County, Florida, on the 28th day of July, 1915, and duly recorded in said public records in Mortgage book 49, on pages 1 to 32, and was duly filed for record in Putnam County, Florida, on the 29th day of July, 1915, and duly recorded in said public records in Mortgage Book 7 at page 182 et seq.

2nd. That your orator further amends his said bill by striking out the words "State of Illinois" and adds in lieu thereof "State of New Jersey" wherever the same appears in said bill as the State

in which the said Assets Realization Company was incorporated.

That exhibit "B" hereto attached and made a part hereof is a true copy of said note for \$258,601.51, made by the said defendant to the said Assets Realization Company.

Your orator amends the prayer of his original bill by adding thereto the following: That in the event the Court shall deem it proper and just that an account may be taken of the amount due upon the said note for \$258,601.51 together with interest thereon

and for the notes mentioned in exhibit "C" together with
165 interest thereon, and that the said defendant may be decreed

to pay the same within a short day to be fixed by the Court; that in default thereof that your orator may have the relief as prayed in and by his original bill.

ELDON BISBEE,
HOCKER & MARTIN,
Solicitors for Complainant.

166 *List of Notes of Oklawaha Valley Railroad Company Owned by Assets Realization Company.* EXHIBIT C.

Date.	Time.	Owner of.	Amount.
June 7, 1915,	Sixty days 6%	"Ourselves" (Endorsed)	\$300.00
July 28, 1915,	Three months 6%	Assets Realization Company	2,577.73
Dec. 23, 1915,	Ninety days 6%	"Ourselves" (Endorsed)	2,878.19
Dec. 31, 1915,	" " 6%	"Ourselves" (Endorsed)	2,000.00
Jan. 29, 1916,	On Demand with int.	"Ourselves" (Endorsed)	2,000.00
June 12, 1916,	" " "	"Ourselves" (Endorsed)	800.00
July 14, 1916,	" " With Int.	"Ourselves" (Endorsed)	2,779.90
Aug. 7, 1916,	On Demand	"Ourselves" (Endorsed)	1,500.00
Aug. 12, 1916,	On Demand with int.	Assets Realization Company	750.00
Aug. 29, 1916,	" " 6%	"Ourselves" (Endorsed)	200.00
Sept. 1, 1916,	" " 6%	"Ourselves" (Endorsed)	877.03
Sept. 3, 1916,	" " "	"Ourselves" (Endorsed)	600.00
Sept. 25, 1916,	" " with int.	"Ourselves" (Endorsed)	485.60
Nov. 17, 1916,	" " "	Assets Realization Company	450.00
Nov. 16, 1916,	" " "	Assets Realization Company	450.00
Dec. 6, 1916,	" " "	"Ourselves" (Endorsed)	150.00
Dec. 18, 1916,	" " "	"Ourselves" (Endorsed)	500.00
Dec. 28, 1916,	" " with int.	Assets Realization Co.	218.00
Jan. 15, 1917,	" " "	Assets Realization Company	665.00
Feb. 15, 1917,	" " With Int.	Assets Realization Company	965.84

EXHIBIT C—Continued.

Date.	Time.	Owner of.	Amount.
Feb. 23, 1917,	"	Assets Realization Company.....	200.00
Mar. 13, 1917,	"	Assets Realization Company.....	350.00
Mar. 17, 1917,	"	Assets Realization Company.....	1,000.00
Mar. 22, 1917,	"	Assets Realization Company.....	366.42
Apr. 21, 1917,	"	Assets Realization Company.....	1,000.00
Apr. 26, 1917,	"	Assets Realization Company.....	234.40
May 16, 1917,	"	Assets Realization Company.....	3,979.30
May 16, 1917,	"	Assets Realization Company.....	990.28
June 22, 1917,	"	Assets Realization Company.....	845.00
July 12, 1917,	"	Assets Realization Company.....	500.00
July 24, 1917,	"	Assets Realization Company.....	700.00
Aug. 16, 1917,	"	Assets Realization Company.....	1,000.00
Sept. 15, 1917,	"	Assets Realization Company.....	1,795.61
Sept. 28, 1917,	"	Assets Realization Company.....	485.60
Oct. 16, 1917,	"	Assets Realization Company.....	1,472.88
Nov. 12, 1917,	"	Assets Realization Company.....	456.16
			<hr/>
			\$36,552.94

167 [In margin:] United States Documentary Stamps, \$51.74,
attached.

\$258,601.51.

Jacksonville, Florida, July 1st, 1915.

Three months after date Ocklawaha Valley Railroad Company for value received, hereby promises to pay Assets Realization Company or order, at its office in the City of New York in funds current at the New York Clearing House, Two Hundred and Fifty-eight thousand and six hundred and one and 51/100 Dollars, with interest at the rate of six per cent. per annum, having deposited with the said Company as collateral security for the payment of this note and of all other liabilities of the undersigned, due or to become due, or which may hereafter be contracted or existing, whether incurred directly or indirectly by the undersigned to the said Company including as well promissory notes, bills of exchange and other evidences of indebtedness in writing, made, indorsed or accepted by the undersigned and purchased or owned by said Company the following property, viz.:

First Mortgage Bonds of said Railroad Company in the principal amount of Three Hundred Thousand Dollars (\$300,000.00).

The undersigned hereby agrees to deposit with the said Company such additional collateral security as the said Company may from time to time demand; and also hereby gives to the said Company a lien for the amount of this note and of all liabilities aforesaid, upon all the property or securities at any time given unto or left in the possession of the said Company by the undersigned for safe keeping or otherwise, and also upon any balance of the deposit account of the undersigned with the said Company.

On the non-performance of the foregoing agreement as to furnishing additional collateral, or upon the non-payment of this note or of any of the above-mentioned liabilities, whenever they or any thereof become due under the terms hereof, or if at any time the market value of the securities left in the possession of said Company as security for the payment hereof shall decline to such extent as to reduce the equity therein (above the amount represented by this note, whether due or not due), to a margin of less than twenty per cent, then, and in either such case, the said Company is hereby authorized to sell, assign and deliver, the whole or any part of the said securities, or any substitutes therefor, or any additional thereto, or any other property of the undersigned at any time given unto or left in the possession of the said Company for safe keeping or otherwise, at any broker's board or at public or private sale, at the option of the said Company, or of any of its officers, without either advertisement or notice, and without requiring any demand for payment or for additional collateral security, and without regard to any such demand if made, all of which are hereby expressly waived. If such securities or property are sold at public sale, the said Company may itself purchase the whole or any part thereof free from all right of redemption on the part of the undersigned, which is hereby waived

and released. In so far as the collateral security given with this note or the property upon which said Company is given a lien as hereinbefore provided, shall consist of negotiable instruments or any chose in action or undivided interest in property, the said Company may, instead of selling, collect or otherwise realize upon the same, with or without suit, and make such compromise as it may deem best with any or all parties in interest, and may extend the time of payment of any such instrument of chose in action as to

other parties liable thereon, without thereby incurring
 168 responsibility to or discharging or otherwise affecting any liability of the undersigned and the undersigned hereby waives presentation, protest and notice of non-payment of any such negotiable instrument to which he is a party. In the case of any such sale or reduction to money by collection, the said Company may first deduct all the expenses for collection, sale or delivery, of the property or securities so sold or collected; and may then apply the residue to this note, and to pay one or more, or all, of the said liabilities, whether due or not due, as any of its officers shall deem proper, making rebate for interest on liabilities not then due, and returning the surplus, if any, to the undersigned, who shall remain liable to the said Company for any deficiency arising upon any such sale. The undersigned does hereby further authorize the said Company at its option, at any time, to appropriate and apply to the payment of this note or of any of the said liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said Company on deposit, or otherwise, to the credit of or belonging to the undersigned, whether this note or the said liabilities are then due or not due. The undersigned, as well also the guarantors and endorser, if any, of this note, agree that in the event of the insolvency of the undersigned, or of any such guarantor or endorser whether evidenced by the bankruptcy of, or the making of a General Assignment for the benefit of creditors by, or of the appointment of a receiver for the property of the undersigned, or of any such guarantor or endorser, or otherwise, this note and all the aforesaid liabilities shall at the option of the said Company become immediately due without demand of payment thereof, and without notice to the undersigned or to any guarantor or indorser, which demand and notice are hereby expressly waived. The undersigned further agree that, upon any transfer of this note, the said Company may deliver the said collaterals or any part thereof, to the transferee, who shall thereupon become vested with all the powers and rights above given to the said Company in respect thereto, and the Company shall thereafter be forever relieved and fully discharged from any liability or responsibility in the matter.

OKLAHOMA VALLEY RAILROAD
 COMPANY.

By CHARLES A. MARSHALL,

President,

Attest:

[SEAL.] G. M. P. MURPHY,

Secretary.

Exhibit D.

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On December 24th, 1917, the complainant filed the following affidavits, proof of attorney's fees:

In the Circuit Court of Marion County, Florida. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

VS.

OCKLAHAWA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendant.

STATE OF FLORIDA,
County of Marion:

Before me, the undersigned officer, personally appeared H. M. Hampton who being by me first duly sworn deposes and says that he is a practicing attorney in the above styled court, that he is familiar with the fees usually allowed complainants' solicitors in the foreclosure of mortgages and trust deed, that he has examined the record in this case and that in the opinion of affiant the sum of \$12,500.00 Dollars is a reasonable sum to be allowed the solicitors for complainant for services rendered in these proceedings, and that in the opinion of affiant the sum of One Thousand Dollars is a reasonable amount to be allowed to the Trustee, Wm. S. Hood, for his services.

H. M. HAMPTON.

Sworn to and subscribed before me this the 20th day of December, 1917.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

170 In the Circuit Court of Marion County, Florida. In
Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

VS.

OCKLAHAWA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendant.

STATE OF FLORIDA,
County of Marion:

Before me the undersigned officer, personally appeared L. W. Duval, who being by me first duly sworn deposes and says that he is a practicing attorney in the above styled court, that he is familiar with the fees usually allowed complainant's solicitors in the foreclosure of mortgages and trust deed, that he has examined the record in this cause and that in the opinion of affiant the sum of Twelve Thousand Five Hundred (\$12,500.00) Dollars is a reasonable sum to be allowed the solicitors for complainant for services rendered in

these proceedings, and that in the opinion of affiant the sum of One Thousand Dollars is a reasonable amount to be allowed to the Trustee, Wm. S. Hood, for his services.

L. W. DUVAL.

Sworn to and subscribed before me this the 20th day of December, 1917.

D. S. FERGUSON,
Notary Public. [S. P. SEAL.]

On December 24th, 1917, the court entered final decree as follows:

171 In the Circuit Court of the Fifth Judicial Circuit of Florida
in and for Marion County. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendant.

This cause came on this day to be heard and was argued by counsel and thereupon, upon consideration thereof it was ordered, adjudged and decreed as follows:

That the defendant Ocklawaha Valley Railroad Company a corporation organized and existing under the laws of the State of Florida, pay to the complainant, William S. Hood, as Trustee, within three days from this date the sum of Three Hundred Thirty-four Thousand, Nine Hundred Seventy-four and 57/100 (\$334,974.57) with legal interest thereon to be computed from this date until paid, and also the sum of \$12,500 00/100 as a reasonable solicitor's fee for foreclosing said trust deed sued on in this cause, and also to the complainant for his services as Trustee, the sum of \$1,000 00/100 and also all other costs of this suit to be taxed by the Clerk of this Court; that in default of said payments being made as aforesaid, by the said defendant, then in that case the said mortgaged premises mentioned in the said bill of complaint and in said trust deed, to-wit:

The line of railroad extending from the terminus of the Company, in the City of Ocala, a distance of six miles, to a point known as "Silver Springs" in the County of Marion, as described and defined in and subject to the terms of that certain lease and agreement, dated December 14, 1909, between the Seaboard Air Line Railroad Company and the Ocala Northern Railroad Company.

172 The line of railroad extending from Silver Springs to Fort McCoy, in the County of Marion, a distance of 12.3 miles; from Fort McCoy to the City of Palatka, in Putnam County, a distance of 32.5 miles, passing through the towns of Bay Lake and Orange Springs, in Marion County, and passing through Marion County into Putnam County at or near Orange Creek, and thence in Putnam County by way of the towns of Kenwood, Rodman and Kenilworth, to the City of Palatka, and all extensions thereof.

The line of railroad extending from the terminus of the company's line in the City of Palatka, a distance of one and one-half miles, to the terminus of the Company's line in the said City of Palatka, leased from the Georgia, Southern & Florida Railway Company.

The right of way of the Company, one hundred feet in width, from Silver Springs to the City of Palatka.

All and singular the franchises, rights, privileges and immunities now or hereafter appendant or appurtenant to or used in connection with the said lines of the Company and any and all extensions and branches thereof.

Also, that certain lot or parcel of land in Ocala, Florida, in Block 64, Old Survey of the City of Ocala, on which said lot are now located the general offices of the defendant Ocklawaha Valley Railroad Company, which lot or parcel of land is more particularly described in that certain deed of date the 30th day of April, 1915, signed by R. L. Milton as Special Master, as is found of record in the public records of Marion County, Florida, in Deed Book 161, page 357, which said lot is also described in that deed of date November 1st, 1911, signed by E. P. Rentz and Kate W. Rentz to the Ocala Northern Railroad Company, as found of record in Deed Book 150 at page 485 of the public records of Marion County, Florida.

Also, all other property included in that certain trust deed made by Ocklawaha Valley Railroad Company to W. S. Hood, Trustee, recorded in the public records of Marion County, Florida, in Mortgage Book 49, at pages 1 to 32, and recorded in the public records of Putnam County, Florida, in Mortgage Book 7 at page 182 et seq.

All of said property or so much thereof as may be sufficient to realize the amount so due the complainant for principal and interest and also the costs of this suit, including solicitors' fees as aforesaid, and the fees, disbursements and commissions on the sale herein mentioned, and all other costs; to be sold on a legal sale day at public auction, at public outcry to the highest and best bidder, in front of the Court House door in the said County of Marion, State of Florida, and at such sale the Master herein appointed is hereby instructed to first offer (1), all the property included herein to be held, used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, and if as much as \$200,000.00 is bid under such first offering herein provided for, the Master will not offer the same for sale under the second offering herein provided for, otherwise he will immediately thereafter, on the same day and at the same place, (2) offer all of said property for the purpose of and with the privilege on the part of the purchaser of dismantling the same, and that unless the bid received under the second offering herein provided for shall exceed by \$100,000.00 the bid received under the first offering herein provided for, in the event any bid is made under the said first offering, then in that event it will be the duty of the said Master to accept the highest bid made under the first offering herein provided for; but if no bid is made under the first offering, or the bid under the second offering herein provided exceeds by \$100,000.00 the bid made under the

first offering, then the said Master shall accept the highest bid made under the second offering, and the said Master shall report his doings in this behalf to the Court; That F. R. Hocker be and he is hereby appointed Special Master in Chancery of this Court to execute this decree; that he give public notice of the time and place of sale by previously publishing the same for a space of thirty days in 174 one newspaper published in Marion County, Florida, and in one newspaper published in Putnam County, Florida; that the Assets Realization Company, a corporation organized and existing under the laws of the State of New Jersey, or any of the parties to this cause, may become the purchaser or purchasers at said sale; that the said Master on such sale being made shall make, execute and deliver a deed to the purchaser of said properties or any portion thereof; that the said Master out of the proceeds of said sale shall retain his fees, disbursements and commissions on said sale; that he pay to the officers of this Court their costs in this suit; that he shall pay all state and county taxes properly assessed against said property or any part of same; that he pay to the complainant's solicitors their fees for foreclosing this trust deed as herein allowed; that out of the remainder of said proceeds he pay to the complainant Three Hundred Thirty-four Thousand Nine Hundred Seventy-four and 57/100 (#334,974.57) as Trustee for the Assets Realization Company, a corporation organized and existing under the laws of the State of New Jersey, or that such sum be paid to the said Assets Realization Company, together with legal interest thereon from the date of this decree to the date of said sale; or if such remainder shall be insufficient to pay the whole of said amount and interest as aforesaid, then that he apply said remainder to the extent to which it may reach in satisfaction of said amount and interest, and that the said Master take receipts from the respective parties to whom he may have made payments as aforesaid, and file the same together with his report of sale to this Court.

It is further ordered, adjudged and decreed that the said complainant as Trustee as aforesaid or the said Assets Realization Company in the sale hereunder of the property above mentioned, shall be entitled to use in bidding all or any part of said indebtedness of Three Hundred Thirty four Thousand, Nine Hundred Seventy-four and 54/100 (\$334,974.54) Dollars above mentioned, with in- 175 terest, and have his or its bid credited on said indebtedness, if such bid is accepted, provided that the highest bidder under the second offering provided for in this decree, if his bid exceeds by One Hundred Thousand Dollars the highest bid made under the first offering, or if no bid is made under the first offering shall be required by the said Master to immediately deposit with the said Master \$20,000 00/100 in cash upon his said bid, to be applied as may be needed in the payment of costs and taxes; provided also, that in the event the highest bid made under the second offering shall not exceed by One Hundred Thousand Dollars the highest bid made under the first offering, then and in that event the highest bidder under the first offering herein provided for shall immediately deposit with said Master in cash, the full amount of his said bid.

That in case the said property shall sell for more than sufficient to pay the principal, interest, costs and fees of this suit and taxes upon said property, the said Master after making the payments aforesaid as ordered, shall bring such surplus moneys into Court without delay to abide the further order of the Court.

It is further ordered, adjudged and decreed that the defendant and all persons, firms or corporations claiming by through or under it since the commencement of this suit be forever barred and foreclosed from all equity of redemption, of, in and to said property herein described or any part thereof in the event of sale hereunder.

It is further ordered, adjudged and decreed that upon the execution and delivery of the conveyance or conveyances aforesaid the said purchaser or purchasers, his, her or their representatives or assigns shall be given possession of said property herein described and every portion thereof conveyed to him, her or them, and any purchaser shall be entitled upon the production of the master's deed herein to demand possession of any part of said property included in such deed, and on refusal so to do the persons so refusing will

176 be held and considered in contempt of this Court.
The Court reserves the right to reject any or all bids made hereunder.

Done and ordered at Chambers at Ocala, Florida, this the 24th day of December, 1917.

W. S. BULLOCK,
Judge.

On December 29th, 1917, the Receiver filed his report and inventory as follows:

In the Circuit Court of Marion County, Florida. In Chancery.

WILLIAM S. HOOD, Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, Defendant.

Comes now S. P. Hollinrake, heretofore appointed Receiver in this cause, and in accordance with the rules of this Court submits herewith a complete inventory of the property committed to his care as such Receiver in this cause, which inventory is hereto attached.

Respectfully submitted,

S. P. HOLLINRAKE,
Receiver.

STATE OF FLORIDA,
County of Marion:

Before the undersigned authority personally came S. P. Hollinrake who being first duly sworn deposes and says that he is the Receiver named and appointed by the Court in the above styled cause

and says to the best of his knowledge, information and belief the inventory hereto attached is complete and correct.

S. P. HOLLINRAKE.

Sworn to and subscribed before me this the 29 day of December, 1917.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

Inventory of Property of the Ocklawaha Valley Railroad Co., December 20th, 1917.

3 locomotives.	Fallow stops for 8 cars.
1 locomotive tank (scrap).	Collum guides and posts for 8 cars.
3 passenger coaches.	Queen posts and truss rods for 8 cars.
3 passenger coaches (scrap.)	Bolster rods for 8 cars.
177 1 baggage car (scrap).	Carrier irons for 8 cars.
2 flat cars.	Center plates for 5 cars.
3 lever cars.	22 old brake beams.
2 push cars.	Lift lever brackets and sockets washers for 4 cars.
2 roadway motor cars.	Side bearings and timber knees for four cars.
14 lamp burners.	Stake pockets for 4 cars.
16 car brasses $3\frac{3}{4} \times 7''$.	Brake liners and brake rods for 5 cars.
6 " " $4\frac{1}{4} \times 8''$.	Lever rest and bolster fulcrums for 4 cars.
6 " " $5 \times 9''$.	5 air brake cylinders.
5 front truck brasses.	18 journal boxes.
2 main rod brasses.	1 shop cart.
2,000 car seals.	2 brake beams.
2 pair 60M car wheels.	6 second hand locomotive tires.
2 " 50M " " "	1 small box pipe fittings.
2 " 50M " " (old).	3 oil feed coils for dynamo.
1 " Eng. truck wheels.	3 copper air pump gaskets.
2 prosser tools.	4 sets air pump packing.
12 taper shank drills.	12 sets rubber tripple gaskets.
2 large reamers.	4 water glasses and gaskets.
3 spindle stay bolt taps.	$\frac{1}{2}$ box pkg. water pump.
13 single end and stocket wrenches.	1 box injector fittings (old).
1 backing hammer.	12 pounds small nails.
1 26" Stilson wrench.	2 coach oil lamps.
1 journal jack.	1 pump governor.
1 jack plain.	1 No. 7 monitor injector.
1 blow torch.	12 signal air hose.
3 lanterns.	15 pounds babbitt.
1 50 foot $\frac{3}{4}''$ water hose.	$\frac{1}{2}$ box torpedoes.
3 Janey Coupler knuckles.	
2 major coupler knuckles.	
3 bottom brake rods.	
Truck and draft spring for 8 cars.	

1 Qt. neuratic acid.	1 cellar puller.
1 " sulph. "	20 pounds small rivets.
15 chisels and boiler tools.	4 sets piston packing.
2 sets pipe dies.	100 assorted bolts.
2 roller flue expanders.	1 pilot eng. coupler.
1 ratchet and 10 drills.	32 sets 50M cap. arch bars.
12 pipe and bolt taps.	4 80M cap. engine axles.
3 stay bolt taps.	178 1 hand hammer.
12 s. wrenches.	2 monkey wrenches.
2 chisel bars.	1 hatchet.
1 bdl. brass wire.	1 hand saw.
10 lbs. cotton keys.	2 pinch bars.
16 leathers for brake cyl.	1 dope bucket.
1 air signal whistle.	1 tire removing machine.
75 headlight carbons.	3 R. E. coupler knuckles.
1 office press.	14 brake hangers.
3 pounds graphite.	5 tribble valves.
1 box car lettering stencils.	1 tower coupler.
8 coach seat backs.	1 tool cupboard.
3 grate bars.	1 gauge tester.
30 gallons valve oil.	3 piston packing moulds.
1 100 gal. K oil tank.	1 office lamp.
1 bale 150 # cotton waste.	4 coach equalizing bars.
2 W. G. Mountings (old).	1 tank draw bar casting.
12 air hose without fittings.	2 old air reservoirs.
12 dust guards.	7 coach springs.
1 hand screw punch.	5 sets tank springs.
1 half keg assorted rivets.	8 old car wheels.
1 coach stove.	3 pieces tank steel.
6 stove grates.	12 pieces 3" pipe iron.
4 washout plugs in rough.	5,000 pounds scrap iron.
1 duplex 3/4 -pring governor.	1 anvil.
100 lbs. assorted nuts.	1 vise.
12 lubricator glasses.	1 riveting forge.
9 sets valve stem packing.	12 pair tongs.
22 feet hollow stay bolt iron.	20 fitters, flatters, cleavers.
17 butt couplers.	swedges, etc.
1 set brass stencils.	1 journal jack.
8 coach seat bottoms.	2 screw jacks.
500 B. S. Coal.	1 hydraulic jack.
30 gallons black oil.	4 ra-chet jacks.
6 tank hose.	1 sledge hammer.
1 pair chain tongs.	4 monkey wrenches.
Lot air pump fittings.	1 set bolt dies.
1 driving brake knuckle.	1 wood boring machine.
15 flue ends 2 x 30".	3 wood chisels.
2 pcs. glass 25 1/4 x 29 1/4.	3 chisel bars.
1 box lamp chimneys.	1 square.
2 engine markers.	1 drawing knife.
1 coach seat.	1 breast drill.
1 steam heat reducing valve.	1 spring puller.

1 Stilson wrench.	1 monkey wrench.
2 oil cans.	4 tie tongs.
1 grind stone.	5 track jacks.
1 chain block.	3 track gauges.
8 pieces oak car timber.	10 lining bars.
26 pieces pine car timber.	2 mattox.
1 rip saw and table.	6 brush hooks.
2 band saws.	3 water kegs.
1 belt driven water pump.	1 axe.
1 10 H. P. gas engine.	1 spike puller.
1 cross cut saw.	1 foot adz.
1 foot adz.	1 cross cut saw.
50 feet hamp rope.	1 hack saw frame.
25 lbs. babbitt.	3 H. S. blades.
8 scrap car brasses.	3 beam scales.
1½ gallons varnish.	1 pr. pliers.
1 brace and bits.	1 climber's belt.
100 feet cypress lumber.	1 pr. climbers.
1 18 ft. shaft and 6 pulleys.	1½ roll wire.
7 coach journal boxes.	1 pair buffalo grips.
3 eccentric strops.	179 1½ kegs spikes.
3 coach pedestals.	1 keg old spikes.
10 truck collars.	½ keg bolts.
12 wedges.	1 grindstone.
150 old boiler fires.	2 level boards.
2 pieces hex. tool steel.	1 new lever car wheel.
2 driving springs.	4 old l. c. wheels.
2 piece angle iron.	2 rail rongs.
2 pc. square iron.	50 old 40 lb. rails.
Three gallons paint.	25 broken 40 pound rails.
14 short handle shovels.	360 60-lb. angle bars.
14 long handle shovels.	5 old 40 lb. frogs.
6 claw bars.	7 old 40 lb. S. P.
9 spike mauls.	5 pieces timber, 12 x 12 x 12.
9 track wrenches.	30 cross ties.

Buildings.

1 general office building, Ocala, Fla.
1 depot, Burbank, Fla.
4 section houses, Daisy, Fla.
1 section tool house, Daisy, Fla.
1 depot, Ft. McCoy, Fla.
3 section tool and supply houses, Ft. McCoy, Fla.
1 car shack near West Palatka.
2 work shops buildings, West Palatka, Fla.
1 car shed, West Palatka, Fla.
1 tool and supply house, Palatka, Fla.
1 platform, Bay Lake, Fla.
1 depot, Orange Springs, Fla.
1 " Kenwood, Fla.
1 " Stokely, Fla.

General Office Furniture.

1 double desk.	1 adding machine.
1 standing desk.	1 neostyle.
1 table.	2 iron safes.
2 rate cabinets.	1 water cooler.
2 filing cabinets.	2 ticket cases.
6 chairs.	1 typewriter table.
1 rocker.	1 lot stationery and office supplies.

Agency Furniture and Fixtures.

3 copying presses.	4 ticket cases.
2 tables.	4 ticket daters.
1 roller top desk.	3 stoves.
4 chairs.	2 water buckets.
4 w. h. trucks.	6 fire buckets.
2 platform scales.	

Road.

Approximately 32.41 miles main line, 60 # steel rails.	
" 1.36 " sidings, 60 # " "	
" 12.09 " main line, 40 # " "	
" .80 " sidings, 40 # " "	

On December 31st, 1917, the State of Florida filed the following petition for intervention:

180 In the Circuit Court for Marion County, Florida. In Chancery.

WILL S. HOOD, Trustee.

VS.

OCKLAWAHA VALLEY RAILROAD Co., a Corporation.

Now comes the State of Florida by the Florida Railroad Commission and represents unto the court that heretofore prior to the filing of the bill of complaint in the above entitled cause, a bill for a mandatory injunction was filed in the Circuit Court of Putnam County against the Ocklawaha Valley Railroad Company for a mandatory injunction compelling the said Ocklawaha Valley Railroad Company to continue its operation as a common carrier for hire of freight and passengers over its line of railroad, and upon a hearing of said bill of complaint on the 26th day of November, A. D., 1917, a temporary mandatory injunction and restraining was issued by the Judge of said Circuit Court commanding the said defendant the said Ocklawaha Valley Railroad Company

to continue operating as a common carrier for hire over its railroad.

Your petitioner further represents that the said defendant has disregarded said mandatory injunction and did on or about the 7th day of December, A. D. 1917, discontinue the operation of its trains along its said road and did discontinue services as a common carrier for hire, and that said defendant filed an answer in said injunction suit, pleading its inability to operate said railroad, claiming a lack of sufficient means to pay its employees, etc.

Your petitioner further represents that in aid of said mandatory restraining order issued against the said defendant company, that the state of Florida filed its supplemental bill in this court 181 for the appointment of a receiver, for the purpose of carrying its mandatory injunction order into effect; it being necessary to file said supplemental bill in the court of the home office of said company.

Your petitioner further represents that on the same day within a few hours after the filing of the said supplemental bill for the appointment of a receiver to carry into effect the mandatory injunction order of the court as aforesaid, that the complainant above filed his bill for the foreclosure of a certain mortgage or trust deed upon all the visible property or assets of the said Ocklawaha Railroad Company, in which said bill of complaint the said complainant above asked for the appointment of a receiver, and that upon application therefor S. P. Hollinrake was appointed receiver of all the visible property and assets of the said Ocklawaha Valley Railroad Company and is now such receiver but is not operating said railroad.

Your petitioner further represents that one receiver is all that is necessary for the defendant's property and that the court having appointed a receiver under the bill of complaint filed in the above entitled cause, that your petitioner is entitled to have its ancillary suit filed in the above court consolidated herewith.

Therefore, your petitioner prays that your petitioner may be permitted to intervene in the above entitled cause as it is authorized to do by law, and that the ancillary bill of complaint heretofore filed by your petitioner may be received and filed in the above entitled cause, and that the prayer of your petitioner herein contained may be granted by directing the receiver in the above entitled cause to operate the defendant's railroad, and your petitioner continues and renews the proposition heretofore made regarding the operation of said railroad and prays for the removal of the receiver heretofore appointed, and for the appointment of such receiver as will operate said defendant railroad as a common carrier for hire, and your petitioner will ever pray.

DON C. McMULLEN,
Solicitor for Petitioner.

On January 19th, 1918, the court made the following order:

the Circuit Court of Marion County, Florida. In Chancery.

WM. S. HOOD, Trustee,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation.

This cause coming on this day to be heard upon application of the State to intervene, etc., and the court being advised in the premises, and after argument of Dozier A. De Vane of counsel for the Railroad Commission, and William Hocker, of counsel for Wm. S. Hood, Trustee, and after consideration of the proposition on the part of the State to furnish a Receiver, and the Court being advised that H. S. Cummings is the party who is willing to act as such receiver and the party to whom the proposition of the State refers, and the court being of the opinion that all reasonable effort should be made to continue the operation of the said railroad as a public carrier, if the same can be done without further material injury to the bondholders, of the said defendant, railroad, and it appearing that the said H. S. Cummings is an entirely responsible party and competent to act as Receiver, it is thereupon

Ordered, adjudged and decreed that if the said H. S. Cummings does file in this court before the 30th day of January, 1918, a good and sufficient bond in the sum of Twenty-five Thousand (\$25,000) dollars, signed by two sureties or by a surety company to be approved by the court, payable to Wm. S. Hood, Trustee, conditioned for the faithful discharge of his duties as receiver in this cause, conditioned also that he, the said Cummings, pay to the said Hood, Trustee, all costs, damages or losses which the said Hood as Trustee or the holders of the indebtedness secured by the trust deed sought to be foreclosed herein, may sustain for or on account of any cost of repairing, equipping or operating the line of railroad of the Ocklawaha Valley Railroad during said receivership, conditioned also that the said Cummings shall pay all cost, damage or loss incurred in the operation of said railroad during his receivership of same and hold the said Hood, Trustee, harmless on account of the same and wholly relieve the property involved in this cause from any lien or charge for or on account of the same.

It is further ordered that if the said Cummings file bond as above provided, the court will enter a further order in this cause charging the present receiver and requiring such receiver to turn over all the assets involved in this cause to the said Cummings and appoint the said Cummings, receiver, with power and authority to operate said railroad for a term of not less than one year, unless during said period the said receiver should report to the court his inability to operate said road as such receiver, and the court will further enter an order continuing indefinitely the present sale

which is advertised under the final decree in this cause to take place on the 4th day of February next, and said order appointing said Cummings, Receiver, will provide that he shall bring said road in operation as a common carrier within sixty days from the date such bond is filed, and that the same will thereafter be kept in operation as a common carrier during the duration of the said receivership or until the further order of the court and such order will further provide that in the interest of the complainant herein and the bondholders, the firm of Hocker & Martin, attorneys-at-law, shall act as counsel for such receiver pending said receivership.

Done and ordered at Chambers at Ocala, Florida, the 11th day of January, 1918.

W. S. BULLOCK,
Judge.

On January 19th, 1918, the Court entered the following order:

184 In the Circuit Court of Marion County, Florida. In Chancery.

WM. S. HOOD, Trustee,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation.

This cause coming on this day to be further heard, and upon consideration thereof, the order of this court of date January 11th, 1918, is modified to read as follows:

It is Ordered, Adjudged and Decreed that if the said H. S. Cummings does file in this court, before the 30th day of January, 1918, a good and sufficient bond in the sum of Five Thousand Dollars to be approved by the Court, payable to the Governor of the State of Florida, ~~and his successors~~ in office, conditioned for the faithful discharge of his duties as receiver in this cause, and shall file in this cause a further bond in the sum of Fifteen Thousand Dollars payable to William S. Hood, Trustee, etc., conditioned that he, the said Cummings, shall pay the actual operating expenses of the said railroad as herein after mentioned, to-wit: the cost of repairing, equipping and operating the line of the railroad of the Ocklawaha Valley Railroad during the said receivership, and conditioned also that he, said Cummings, shall hold the said Hood, Trustee, and the Assets Realization Company, a New Jersey corporation, the bondholders, harmless on account of damages sustained on account of personal injuries, stock claims and operating disasters, and from any lien or charge for or on account of same and against damage by reason of any improper use, loss or destruction of the property involved in this cause, except such as shall arise from the usual and ordinary wear and tear under the proper operation thereof.

185 It is Further Ordered, that if the said Cummings files the bonds as above provided, the court will enter a further order in this cause discharging the present receiver and requiring such receiver to turn over all the assets involved in this cause to the said

Cummings, and appoint the said Cummings receiver with power and authority to operate the said railroad for a term of one year, or until such time during said period as the said receiver shall report to the court his inability to operate said road as such receiver; and the court will further enter an order continuing until the further order of the court, the present sale which is advertised under the final decree in this cause to take place on the 4th day of February next, and said order appointing said Cummings, receiver, will provide that he shall bring said road in operation as a common carrier within sixty days from the date such bonds is filed, and that the same will thereafter be kept in operation as a common carrier during the duration of the said receivership, or until the further order of the Court, and such order will further provide that in the interest of the complainant herein and the bondholders, the firm of Hocker & Martin, attorneys-at-law, shall act as counsel for such receiver pending said receivership.

It is Further Ordered that the Motion of Complainant to vacate the said order of date January 11th, 1918, presented this day is hereby denied.

Done and Ordered at Chambers at Ocala, Florida, this the 19th day of January, 1918.

W. S. BULLOCK,

Judge.

On January 22nd, 1918, the Court entered the following order continuing sale:

186 In the Circuit Court in and for Marion County, State of Florida. In Chancery.

WILLIAM S. HOOD, Trustee, etc., Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation,
Defendant.

This cause coming on to be further heard, upon the former order of Court herein, dated January 19th, A. D. 1918, and the Bonds of Henry S. Cummings as Receiver of the Ocklawaha Valley Railroad Company, approved by this Court:

Upon consideration thereof, it is further Ordered, and Decreed:

1. That the Receiver heretofore appointed by the Court, be and he is hereby required to turn over to H. S. Cummings, as Receiver of the said Railroad Company, all of the assets involved in this cause, except the books, accounts & cash.

2. That H. S. Cummings, be and he is hereby appointed as Receiver of all of the assets and property of the Ocklawaha Valley Railroad Company, a corporation, with power and authority to operate the said railroad for a term of one year, or until such time

as the said Receiver shall report to the Court his inability to operate said road as such Receiver;

3. That the order and decree of sale heretofore made herein, decreeing the sale of the mortgaged premises, in the above entitled cause, advertised to take place on to-wit: February 4th, 1918, by the Special Master hereinbefore appointed be, and the same is hereby modified and the present sale herein so advertised, Continued until the further order of the Court.

4. It is further ordered that the said Receiver shall bring the said railroad in operation as a common carrier within Sixty Days from the date of filing of said Bonds by said Receiver, and thereafter shall keep the said railroad in operation as a common
187 carrier during said term, or until the further order of this Court;

5. And it is further ordered in the interest of the Complainant and the bond-holders, the law firm of Hoeker & Martin, are hereby appointed as, and to act as Counsel for such Receiver during his Receivership.

Done at Chambers in Ocala, Florida on this January 22d, 1918.
W. S. BULLOCK,
Judge.

A true copy of the original, filed and recorded the 28th day of February, 1918.

P. H. SUGENT,
Clerk.

By RUTH ERVIN,
D. C.

188 On March 15th, 1918, attorneys for the respective parties filed the following stipulation:

In the Circuit Court of Marion County, Florida. In Chancery.

W. M. S. HORN, Trustee, Complainant,

vs,

OCKLAWAHA VALLEY RAILROAD COMPANY, etc., Defendant.

Stipulation.

Pursuant to the appeal entered in this cause by the complainant it is hereby stipulated between counsel for the respective parties that only the following papers need be included in the transcript of record on appeal, viz:

Final decree, affidavits of Tarver, Hollinrake, Horn, Atkins and Calhoun, filed December 20th, 1917; orders of court of January 11th, January 19th, January 22nd, 1918; complainant's motion to set aside the order of January 11th, 1918, with exhibits attached

hereto; entry of appeal; assignments of error and this stipulation and such other papers and orders in said cause as the complainant herein may see fit to have copied or recited in said transcript.

HOCKER & MARTIN,
Attorneys for Complainant.
J. V. WALTON,
Attorney for the Defendant.

On September 26th, 1918, the complainant filed the following motion:

189 In the Circuit Court of Marion County, Florida.
In Chancery.

W. S. HARRIS, Trustee, Complainant.

VS.

OCKLAHAWA VALLEY RAILROAD COMPANY, a Corporation,
Defendant.

Now comes the complainant and shows to the court

1st. That the comptroller of the state is insisting upon the payment of the sum of Six Thousand Six Hundred Twenty-four and 58/100 (6624.58) Dollars for taxes alleged to be due upon the property involved in this litigation for the year 1917; that the complainant is without funds with which to pay such taxes, and it is the belief of complainant that the receiver, H. S. Cummings, is without sufficient funds to pay such taxes;

2nd. That the Receiver, H. S. Cummings, has failed to file any report as required by Chancery Rule 47, of this court; that for about a month last past the Receiver, H. S. Cummings, has failed to operate daily trains, as required by the order of court;

That the attached letters addressed to H. S. Cummings are true copies of letters written by the solicitors for the complainant to the said H. S. Cummings, which were duly mailed about the respective dates of same; that the attached letter from H. S. Cummings, receiver, together with the statement thereto attached, were duly received by the solicitors for the complainant.

190 Complainant asks that the special master appointed to execute the final decree in this cause be instructed to proceed with the sale of this property.

HOCKER & MARTIN,
Solicitors for the Complainant.

Endorsed.

Motion is granted, Sept. 24th, 1918.

W. S. BULLOCK,
Judge.

Ocklawaha Valley Railroad Company.

H. S. Cummings, Receiver.

Redman, Florida,

Sept. 21, 1918.

Hocker and Martin, Attorneys at Law, Ocala, Florida. (Attention Mr. Hocker.)

DEAR SIRS:

Replying to your letter of Sept. 20th, in regard to reports to be filed by us covering operation of the Ocklawaha Valley Railroad.

Col. Haskell reached home last week and after getting the necessary information we are enclosing you a copy of freight, passenger and other revenue and expenditures covering operations from Jan. 29th, to July 31st, 1918.

The court ordered us to operate the road as a common carrier and we have complied with this order in every respect.

In event the bondholders require any additional information we will be glad to furnish same.

Yours very truly,

H. S. CUMMINGS,

Receiver.

191 *Statement of Earnings and Operating Expenses Oklahoma Valley Railroad Co., January 26th to 31st, Inc., 1918.*

Earnings:

Passenger revenue	\$147.15	
Freight earnings	557.78	
Misc. revenue	2.00	
	<hr/>	\$706.93

Operating Expenses:

Mntc. Roadway—		
Cross ties	\$245.15	
Section crews	224.00	
	<hr/>	469.15

Transportation—

Enginemen & Trainmen payroll	108.00	
Wood for loco	59.05	
Pumping water	3.00	
	<hr/>	170.05

Other expenses—

General expense	33.30	
Supplies	6.31	
Est. track rent	13.87	
Supt. & Insp.	67.00	
Agencies	26.10	
Mntc. Eqp't.	41.00	
" "	17.30	
" "	12.05	
	<hr/>	217.53

Hire of eqpt.	47.40	
Joint facility rent	27.73	
	<hr/>	928.86

Loss on operations	<hr/>	\$221.93
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*Statement of Earnings and Operating Expenses Ocklawaha Valley
Railroad Co., Feb., 1918.*

Earnings:

Freight earnings	3,974.31	
Passenger revenue	749.28	
Interline freight (gov.)	233.64	
Misc. revenue	77.00	
		<u>\$5,034.43</u>

Operating expense:

Maintenance ways & Structures—

Supplies	34.96	
Labor, section crews....	763.42	
Supt. roadway	100.00	
Cross ties	1,144.03	
Bridge material	1,024.13	
		<u>3,066.54</u>

Transportation—

Trainmen payroll	276.15	
Enginemen "	184.85	
Fuel for Locos	413.29	
Supplies	9.80	
		<u>884.09</u>

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Maintenance equipment—

Locomotive repairs	313.88	
Coach "	113.35	
Motor car "	52.63	
		<u>479.86</u>

Other expenses—

Supt. & Mainte. eqpt....	169.18	
Superintendence	150.00	
Office expense & supt....	184.50	
Agencies	195.60	
General expense	114.64	
Misc.	5.59	
Joint facility rent.....	250.00	
Material used	159.85	
Hire of eqpt.	494.80	
		<u>1,724.16</u>
		<u>\$6,154.65</u>

Loss on operations 1,120.22

NOTE.—In ways and structures items of cross ties and bridge material, this being used to rebuild the Silver Springs Bridge and charged directly to operating expenses.

*Statement Earnings and Operating Expenses Ocklawaha Valley
Railroad Co., Mar., 1918.*

Earnings:

Freight earnings	4,006.58	
Passenger revenue	965.78	
Interline freights (Gov.)	4,006.58	
Misc. revenue	107.85	
		<u>5,181.82</u>

Operating expenses:

Mnte. ways and structures—		
Section crews' pay-roll..	781.36	
Supt. roadway	100.00	
Cross ties	326.38	
Supplies	53.17	
		<u>1,260.91</u>

Transportation—

Trainmen pay roll.....	299.75	
Enginemen " "	220.14	
Fuel for loco.....	403.72	
Pumping Feb. & Mar...	37.00	
Hire of extra loco.....	15.45	
		<u>976.06</u>

Maintenance equipment—

Repairs loco.	509.74	
" coaches	205.81	
Superintendence	87.50	
Repairs to motor cars....	9.46	
		<u>812.51</u>

Other expenses—

General expense	24.53	
Superintendence	150.00	
Car inspector	43.05	
Office expense	156.00	
Agencies	170.00	
Joint facility rents.....	250.00	
Hire of equipment.....	635.40	
Material used	236.15	
		<u>1,665.13</u>
		<u>4,714.61</u>

Gain 467.21

193 *Statement Earnings and Operating Expenses Ocklawaha Valley Railroad Co., April, 1918.*

Earnings:

Freight earnings	4,474.75	
Passenger revenue	841.00	
Misc. revenue	5.70	
U. S. mail earnings.....	198.90	
		5,520.35

Operating expenses:

Maintenance ways & Struct.—

Section crews' payroll..	895.60	
Supt. roadway	100.00	
Cross ties	543.42	
Supplies	15.43	
Fuel for motor cars....	26.30	
		1,580.75

Transportation—

Trainmen pay roll.....	308.40	
Enginemen " "	225.55	
Fuel for loco.....	414.33	
Pumping	25.00	
Supplies	4.70	
Water rent, ice, etc.....	53.09	
		1,031.07

Maintenance equipment—

Supplies	116.57	
Shop crew payroll.....	391.15	
Supt. equipment	87.50	
		595.22

Other expenses—

Agencies	204.28	
Superintendence	150.00	
Office expense	156.00	
Joint facility rents.....	250.00	
Hire of equipment.....	499.80	
Gen. expense	71.79	
Telephone repairs	26.50	
		1,358.37
		4,565.41
Gain		954.94

*Statement—Earnings and Operating Expenses Ocklawaha Valley
Railroad Co., May, 1918.*

Earnings:

Freight earnings	4,408.68	
Passenger revenue	966.42	
Misc. revenue	114.91	
Mail earnings	186.20	
		5,676.21

Operating expenses:

Maintenance ways and struct.—		
Section crew pay roll.....	865.49	
Supt. roadway	100.00	
Cross ties	482.10	
Supplies	56.42	
Fuel for motor cars.....	19.84	
Extra track work.....	13.70	
		1,537.55

194 Transportation—

Trainmen pay roll.....	309.20	
Enginemen " "	228.35	
Fuel for loco.....	420.69	
Pumping	25.00	
Water rent, etc.....	24.04	
		1,007.28

Mntc. equipment—

Repair to eqpt.	186.80	
Mntc. " "	162.10	
Supt.	87.50	
Lumber, sup. etc.....	203.38	
Shop work and material.	39.70	
		679.48

Other expenses—

Agencies	200.40	
Superintendence	150.00	
Office expense	156.00	
Joint facility rent.....	250.00	
Hire of <i>exhipment</i>	531.00	
General expense	3.90	
Stamps	21.00	
Prem. on ins. bnds....	19.40	
R. R. guide & eqpt. reg..	31.12	
Fees Am. S. L. R. R. Assn.	10.00	
Office rent, 2 mo.....	10.00	
Phone rent	8.70	
		1,391.52

4,615.83

Gain 1,060.38

*Statement of Earnings and Operating Expenses Ocklawaha Valley
Railroad Co., June, 1918.*

Earnings:

Freight earnings	4,480.62	
Passenger revenue	1,082.99	
Misc. revenue	334.04	
Mail earnings	186.20	
		<hr/>
		6,083.85

Operating expense:

Mntc. way and structures—		
Section crews' pay roll..	1,082.09	
Supt. roadway	105.00	
Cross-ties	963.56	
Fuel for motor cars....	39.46	
Supplies	19.54	
		<hr/>
		2,209.65

Transportation—

Trainmen payroll	303.25	
Enginemen "	231.35	
Fuel for loco	429.20	
Pumping	26.00	
Supplies, water rent, etc. .	68.10	
		<hr/>
		1,057.90

Mntc. equipment—

Labor payroll	265.40	
Supt. eqpt.	87.50	
Supplies	8.50	
Material for supplies....	137.03	
		<hr/>
		498.43

195 Other expenses—

Superintendence	160.00	
Office expense	161.00	
Joint facility rents....	250.00	
Hire of eqpt'	577.20	
General expense	19.26	
Mail service (pay roll) .	46.00	
Inspection	16.00	
Repairs tel. line	23.62	
Express on Ocala Remts.	1.08	
Supplies for office	15.00	
Office rent	5.00	
Sub eqpt. register.....	20.00	
Stamps	12.00	
Tel. & teleg.	23.36	
Agencies	198.41	
		<hr/>
		1,527.93

5,293.91

Gain 789.94

*Statement of Earnings and Operating Expenses Ocklawaha Valley
Railroad Co., July, 1918.*

Earnings:			
Freight earnings	4,990.65		
Passenger revenue	790.07		
Misc. revenue	252.15		
Mail earnings	186.20		
			6,219.07
Operating expense:			
Mnte. ways and structures—			
Section crews' pay roll..	1,331.30		
Supt. roadway	125.00		
Cross ties	1,085.66		
Fuel for motor cars....	33.35		
Supplies and tools.....	86.89		
Misc. supplies	22.92		
		2,685.12	
Transportation—			
Trainmen pay roll.....	380.20		
Enginemen " "	237.85		
Fuel for loco.....	541.92		
Pumping	30.00		
Supplies	57.70		
		1,247.67	
Mnte. equipment—			
Labor payroll	245.20		
Supt. equipment	87.50		
Supplies	7.95		
		340.65	
Agencies—			
Salaries	207.33		
Supplies	26.94		
		234.27	
Other expenses—			
Superintendence	200.00		
Office expense	181.50		
Mail service pay roll...	15.00		
Joint facility rents.....	250.00		
Hire of equipment	603.60		
Am. S. L. Ass'n.....	7.55		
Stamps	15.00		
Publishing new tariffs..	213.94		
Tel. service	14.92		
Telegraph service	3.83		
General expense	3.50		
Office supplies	10.00		
Express on Ocala rent. & Dis.	1.93		
		1,520.77	
			6,028.48
Gain			190.59

Sept. 20th, 1918.

H. S. Cummings, Esq.,
Rodman, Fla.

DEAR SIR:

In re O. C. R. R. Matters.

The state is pressing for the taxes claimed to be due and the bondholders have no funds with which to pay these taxes.

The bondholders are complaining because you have filed no reports and they are absolutely in the dark with respect to the operation of the road. We wrote you about this matter some time ago. The trains are not being operated on the road in accordance with the order of the court.

In view of these circumstances, we deem it but fair to you to say that on Tuesday, the 24th inst., at 2:30 o'clock P. M., or as soon thereafter as we may be heard, we will make application to Judge Bullock to permit the railroad to be sold under the decree already rendered. This application will be made before Judge Bullock at Ocala or wherever he may then be. If our request should be granted the road would probably be sold the first Monday in November and if the sale was confirmed we presume that you would be required to relinquish the road as receiver some time about the middle of November, unless, of course, you happen yourself to be the purchaser.

Yours very truly,

HOCKER & MARTIN.

By ———.

W. H./j.

June 29th, 1918.

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Mr. H. S. Cummings, Receiver,
Rodman, Fla.

DEAR SIR:

In re Hood, Trustee, vs. Ocklawaha Valley R. R. Co.

Chancery rule 47, which which your attorney, Judge Haskell, is familiar, requires that all receivers shall file in court complete reports every three months pending his receivership.

We have just received a very vigorous complaint from the New York attorneys for the bond holders about the failure on your part to file such reports. We have been instructed by these attorneys to proceed before Judge Bullock to have you required to file such complete reports at once but we thought perhaps the matter had simply escaped your attention.

Please let us have a reply to this at once as the New York parties are awaiting advice.

We would be glad to talk with you about the affairs of the railroad and if you have in mind the purchase of the road we believe that we could suggest some matters for your benefit and also for the benefit of the bondholders.

Yours very truly,

HOCKER & MARTIN.

By ———.

W. H./j.

September 7th, 1918.

Hon. Ernest Amos, Comptroller,
Tallahassee, Fla.

DEAR SIR:

On my return to Ocala from a special term of court in Hernando county I find yours of the 2nd inst. relative to the matter of taxes on the Ocklawaha Valley Railroad Company. I do not now recall that any order was made in this case as to the payment of the taxes and I do not see any reason for the making of such an order, as the receiver has at all times paid the taxes on all other railroad properties while in the hands of the receiver. I am going back to Brooksville tomorrow, but I will take this matter up with the attorneys here who represent the railroad, or the bondholders of the railroad, Messrs. Hocker & Martin, and have them write to you and to attend to this matter at once, and by the time I return to Ocala, which will be in about one week.

Yours very truly,

W. S. BULLOCK.

(Copy.)

State of Florida.

Comptroller's Office.

Tallahassee.

September 2, 1918.

Hon. W. S. Bullock,
Judge Circuit Court,
Ocala, Fla.

DEAR JUDGE:

The Ocklawaha Valley Railroad Company has not paid its taxes for the year 1917. My understanding from the Railroad Commission was that a sum sufficient to cover this tax was set aside by the receiver, on instruction or intimation from the court at the time the receiver was appointed.

I am in receipt of a letter from Mr. Cummings, the receiver, stating that it is his understanding that the receiver is exempt from all taxes during the term of his receivership and taxes should be paid by the owners of the railroad.

Of course, you know it is usual for the receiver to pay the taxes

on the property of his trust under direction of the court, and I do not see how there can be any difference in this case, unless, there is some special reason and understanding to that effect.

199 The only interest I have in the premises is to see that the state and county has its money for the taxes due and if there is any way to speed up payment of the same I will appreciate it very much indeed.

With best wishes and kind personal regards, I am

Yours very truly,

ERNEST AMOS,
Comptroller.

A./F.

W. S. Bullock.

Judge Circuit Court.

Ocala, Fla.

September 7th, 1918.

Messrs. Hocker & Martin,
Ocala, Fla.

GENTLEMEN:

Inclosed is letter to me from the Comptroller relative to the taxes on the Ocklawaha R. R. and a copy of my reply thereto. I wish you would take this matter up at once with the receiver and see that this matter is arranged.

Yours very truly,

W. S. BULLOCK.

On Nov. 1st, 1918, attorneys for receiver filed the following notice:

In the Circuit Court of Marion County, Florida. In Chancery.

WM. S. HOOD, Trustee,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation.

Notice.

To Messrs. Hocker & Martin, Attorneys for the Complainant:

You will please take notice that on next Friday, November 200 1st, 1918, at two o'clock P. M., we shall apply to Hon. W. S. Bullock, Judge of said Court, at Ocala, Florida, for an order vacating the order of the court dated September 24th, 1918, wherein the Special Master therein was directed to proceed with the sale, and we shall then and there present and argue a motion to that end, a copy of which we are presenting to you with this notice, as well as

copy of the said receiver's answer to the petition of the complainant, on which said order was based.
This the 28th day of October, 1918.

HILBURN & MERRYDAY,
E. E. HASKELL,
Attorneys for H. S. Cummings, Receiver.

On November 1, 1918, the Court made the following order:

In the Circuit Court of Marion County, State of Florida, in Chancery Sitting.

WILLIAM S. HOOD, Trustee.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation.

On September 24th, 1918, this court made an order in this cause directing the special master in this cause to proceed with the sale of the property. At that time notice has been given the Receiver and he did not appear, and this court was of the opinion that there was no objection on the part of the receiver and it further appearing that such order should be made to proceed.

On review of the whole situation this day I am of the opinion that there was some misunderstanding on the part of the receiver and he did not appear and show to the court the reasons that have been made to appear this day why the order directing the master to proceed should not have been made.

I have again reviewed the whole situation and I am fully satisfied that I should not have made the order directing the master to proceed and the order of September 24th, 1918, directing such action is hereby revoked.

The receiver has not acted with the degree of diligence he should have acted and it is ordered that he pay the cost of the advertising the property for sale consequent on the order of September 24th, 1918.

Done at Ocala, Florida, November 1st, 1918.

W. S. BULLOCK,

Judge.

On November 1st, 1918, attorneys for Receiver filed the following motion to vacate order of Court:

In the Circuit Court of Marion County, Florida. In Chancery.

WM. S. HOOD, Trustee,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation.

Motion to Vacate Order of the Court Directing the Special Master to Proceed with the Sale, Dated September 24, 1918.

Now comes H. S. Cummings, Receiver of this court, in the above styled cause, by his attorneys, Hilburn & Merryday and E. E. Haskell, and moves this Honorable Court to vacate and set aside the order of this court dated September 24th, 1918, wherein the Special Master in said cause was directed to make a sale of the property involved in this cause, on the following grounds:

1. Because none of the matters set forth and stated in the said motion were any proper matters to be considered by the court as against the rights of this receiver and the interests he represents, justifying an order of the court to proceed with the sale.

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2. Because complainants in and by their said motion and the statements therein made, improperly mislead the court with the belief that this receiver had been guilty of misconduct in the operation and performance of his duties.

3d. Because as a matter of fact upon the showing made by this receiver, of which the complainant's attorneys had specific information, said railroad has been so operated, and its earnings affirmatively showed that such railroad was a paying proposition and that same ought not to be dismantled.

4. Because the earnings of this railroad as carried on by this receiver showed that by a proper application of its revenues its earnings were sufficient to not only pay the taxes and operating expense of said railroad, but in addition thereto a reasonable return upon a fair value of the property involved.

5. Because there were no true matters of fact stated in the application of the complaint for a procedure of a sale to justify the discontinuance of the receivership or suspend the operations of the road.

6. Because the facts established by the conduct of the Receiver in the operation of said road justified a continuance of the operation of the road, and should bar any action to dismantle or junk said road.

7. Because many of the most important matters stated as facts in the motion of the complainant, for a sale of the road were not true.

8th. Because the said receiver did not have a reasonable opportunity to resist the motion of the complainant for a sale of said road as the attorneys for the complainant *was* appointed by order of this court as attorneys for this receiver, and this receiver had no information or knowledge that they would proceed adverse to his receivership until a few days before said motion was brought on for a hearing before the court.

203 9th. Because the matter of taxes mentioned in the first paragraph of the motion of complainant, was not a proper matter to be charged against this receiver for the reason that said taxes accrued and were due and payable before this receiver took charge of the property and no proceedings had herein directing said receiver to pay the same.

10th. Because the complainants had information in their possession at the time the motion was granted showing that the earnings of said railroad as being operated by this receiver would shortly produce enough funds to pay such taxes, provided the court upon proper proceedings should order the same done.

11. Because no where in the proceedings or orders of this court has there ever been any order of court directing this receiver to operate daily trains on said railroad; and because the natural inference of the language used and the manner in which it is alleged, naturally mislead the court to understand that such order had in fact been made and that this receiver had failed to comply with the order of the court.

12. Because if this receiver had failed to file reports as required by Chancery rule 47 of this court, this motion ought not in effect to have operated other than as a suggestion to the court to order the Receiver to file such reports as required by the rule.

HILBURN & MERRYDAY,

E. E. HASKELL,

Attorneys for H. S. Cummings, Receiver.

On November 1, 1918, the Receiver filed the following inventory:

204 *Inventory of Property of the Ocklawaha Valley Railroad Company, Dec 20, 1917.*

3 locomotives in very poor condition.	2,000 car seals.
2 passenger coaches, only one fit for service.	2 pr. 50M car wheels.
1 baggage car (scrap).	1 pr. eng. truck wheels.
3 lever cars.	12 taper stank drills.
2 roadway motors cars (bad order).	3 spindle stay bolt taps.
14 lamp burners.	1-36 stilson wrench.
6 car brasses 4¼ x 8.	1 jack plain.
5 front truck brasses.	3 lanterns.
	5 janczy coupler knuckles.
	3 bottom brake rods.
	2 break beams.

- 1 small box pipe fittings.
- 3 copper air pump gaskets.
- 12 rubber triple gaskets.
- 2 coach oil lamps.
- 1 No. 7 monitor injector.
- 15 lbs. rabbit.
- 1 qt. neuratic acid.
- 15 chisel and boiler tools.
- 2 roller flue expanders.
- 12 pipe and bolt taps.
- 12 wrenches.
- 1 hand hammer.
- 1 hatchet.
- 2 pitch bars.
- 1 tire removing machine.
- 14 brake hangers.
- 1 tower coupler.
- 1 gauge tester.
- 1 office lamp.
- 10 lbs. cotton keys.
- 1 air signal whistle.
- 1 box injector fittings.
- 205 (old).
- 8 coach seat backs.
- 300 gal. valve oil.
- 1 bale 50 cotton waste.
- 12 air hose without fittings.
- 1 hand screw pump.
- 1 coach stove.
- 4 washout plugs in rough.
- 100± assorted nuts.
- 9 set valve stem packing.
- 10 scrap eng. tires.
- 75 headlight carbons.
- 3 pounds graphite.
- 500 lb. R. S. coal.
- 6 tank hose.
- 1 lot air pump fittings.
- 15 flue ends 2 x 30".
- 1 box lamp chimneys.
- 1 coach seat.
- 1 collar puller.
- 4 sets piston packing.
- 1 pilot eng. coupler.
- 1 locomotive tank, (scrap).
- 3 passenger coaches, (scrap).
- 2 flat cars (1 not complete).
- 2 push cars.
- 16 car brasses 3-3/4 x 7.
- 6 car brasses 5 x 9".
- 2 main road brasses.
- 2 pr. 60M car wheels.
- 2 pr. 50M car wheels (scrap).
- 2 prusser tools.
- 2 large reamers.
- 13 single end and socket wrenches.
- 1 backing hammer.
- 1 journal jack.
- 1 blow torch.
- 1-50 ft. 3/4 water hose.
- 2 major coupler knuckles.
- 1 shop cart.
- 6 scrap locomotive tires.
- 2 oil feed coils for dynamo.
- 4 sets air pump packing.
- 4 water glasses and gaskets.
- 1 pump governor.
- 12 signal air hose.
- One-half box torpedoes.
- 1 qt. sub. acid.
- 2 sets pipe dies.
- 1 ratchet and 19 drills.
- 2 stay bolt taps.
- 2 chisel bars.
- 2 monkey wrenches.
- 1 hand saw.
- 1 dope bucket.
- 2 R. E. coupler knuckles.
- 5 tripple valves.
- 1 tool cupboard.
- 3 piston packing moulds.
- 1 brl. brass wire.
- 16 leathers for brake cyl.
- 1/2 box pump packing.
- 20 lb. small nails.
- 1 box car letter stencils.
- 8 grate bars.
- 1-100 gal. k oil tank.
- 2 W. G. mountings (old).
- 24 dust guards.
- 1/2 keg assorted rivets.
- 6 stove grates.
- 1 duplex 3/4 spring governor.
- 12 lub. glasses.
- 22 ft. hollow stay bolt.
- 17 Butt couplers.
- 1 office press.
- 6 coach seat bottoms.
- 30 gal. black oil.

1 pr. chair tongs.	5 track jacks.
1 driving brake knuckle.	10 lining bars.
2 pes. glass $25\frac{1}{4} \times 29\frac{1}{4}$.	6 bush hooks.
2 oag. markers.	1 axe.
1 steam heat reducing valve.	1 foot adz.
20 pounds small rivets.	1 hack saw frame.
100 assorted bolts.	3 beam scales.
34 sets $50\pm$ cap arch bars.	1 climber belt.
4-80 cap. car axles.	$\frac{1}{2}$ roll wire.
Follow steps for 8 cars.	$1\frac{1}{2}$ keg spikes.
Collum guides and posts for 8 cars.	$\frac{1}{2}$ keg bolts.
Bolster for 8 cars.	2 level boards.
Center plates for 5 cars.	4 old L. C. wheels.
Lift lever brackets and cockets washers for 4 cars.	50 old $40\pm$ rail.
Stake pockets for 4 cars.	350 60 lb. angle bars.
Lever rest and bolster fulcrums for 4 cars.	7 old 40 lb. S. points.
118 journal boxes.	30 cross-ties.
1 tank draw bar casting.	Truck and draft springs for 8 cars.
7 coach springs.	Queen posts and truss rods for 8 cars.
8 old car wheels.	Carrier irons for 8 cars.
12 pes. 3" pipe iron.	22 old brake beams.
1 anvil.	Side bearings and timber knees for 4 cars.
12 pr. tongs.	Brake liners and brake rods for 5 cars.
1 riveting forge.	5 air brake cylinders.
1 hydraulic jack.	4 coach equalizing bars.
1 sledge hammer.	2 old air reservoirs.
1 set bolt dies.	5 sets tank springs.
3 wood chisels.	3 pes. tank steel.
1 square.	5,000 pounds scrap iron (estimated).
1 breast drill.	1 vise.
206 1 stilson wrench.	20 fitters, flatters, cleaver swedges, etc., etc.
1 grindstone.	1 journal jack.
8 pes. oak car timbers.	4 ratchet jacks.
Rip saw and table.	4 monkey wrenches.
1 belt driven water pump.	1 wood boring machine.
1 cross cut saw.	3 chisel bars.
50 ft. hemp rope.	1 drawing knife.
$1\frac{1}{4}$ gal. varnish.	1 spring puller.
500 ft. cypress lumber.	2 oil cans.
7 coach journal boxes.	1 chair block.
3 coach pedestals.	26 pes. pine car timbers.
12 wedges.	2 hand saws.
2 pes. hex. steel.	1-10 H. P. gas engine.
2 pes. angle iron.	1 foot adz.
3 gals. paint.	8 scrap car brasses.
14 long handle shovels.	
9 spike mauls.	
1 monkey wrench.	

1 brace and bit.	1 spike puller.
1-18 ft. foot shaft and 6 pulleys.	1 cross cut saw.
3 eccentric straps.	3 H. S. blades.
10 truck collars.	1 pr. pliers.
150 old boiler flues.	1 pr. climbers.
2 driving springs.	1 pr. buffalo grips.
2 pes. sq. iron.	1 keg old spikes.
14 hand shovels.	1 grindstone.
6 claw bars.	1 new lever car wheel.
9 track wrenches.	2 rail tongs.
4 tie tongs.	25 broken 40 lb. rail.
3 track gauges.	5 old 40 lbs. frogs.
2 mattox.	5 pes. timber 12 x 12 x 12.
3 water kegs.	

Buildings.

	1 general office building, Ocala, Fla.
	1 depot, Burbank, Fla.
	5 section houses, Daisy, Fla.
	1 section tool house, Daisy, Fla.
	1 depot, Fort McCoy, Fla.
	3 section tool and supply houses, Fort McCoy, Fla.
	1 car shack near West Palatka, Fla.
	2 work shop buildings at West Palatka, Fla.
	1 car shed at West Palatka, Fla.
	1 tool and supply house at Palatka, Fla.
	1 platform at Bay Lake, Fla.
207	1 depot at Orange Springs, Fla.
	1 " " Kenwood, Fla.
	1 depot at Stokley, Fla.

General Office Furniture.

1 double desk.	1 standing desk.
1 table.	2 rate cabinets.
3 filing cabinets.	6 chairs.
1 rocker.	1 adding machine.
1 Neostyle.	2 iron safes.
1 water cooler.	2 ticket cases.
1 typewriter table.	1 lot stationery and office supplies.

Agency Furniture and Fixtures.

Two copying presses.	2 tables.
1 roller top desk.	4 chairs.
4 warehouse trucks.	2 platform scales.
4 ticket cases.	4 ticket daters.
3 stoves.	2 water buckets.
6 fire buckets.	

Road.

Approximately 32.41 miles main line 60 lb. steel rail, 1.36 miles 60 lb. sidings, 12.09 miles main line 40 lb. steel rail, .80 miles siding, 40 lb. rail.

I hereby certify that this is a true inventory of the property of the Ocklawaha Valley Railroad Company which came into my hands as Receiver.

H. S. CUMMINGS,
Receiver, Ocklawaha Valley Railroad Company.

Sworn to and subscribed before me, a notary public, this the 28th day of October, 1918, A. D.

P. B. GOETHE,
Notary Public, State at Large.

[N. P. SEAL.]

Notary Public, State of Florida.
My commission expires Jan. 9, 1921.

On December 11th, 1918, the court entered the following order:

208 In the Circuit Court of the Fifth Judicial Circuit of Florida
in and for Marion County. In Chancery.

WM. S. HOOD, Trustee, Complainant,

vs.

OCKLAHAHA VALLEY RAILROAD COMPANY, a Corporation,
Defendant.

This cause coming on upon application of the complainant for enforcement of the final decree rendered herein for the sale of the railroad and other property therein described, and it appearing to the Court that H. S. Cummings as Receiver began the operation of said railroad on the 26th day of January, 1918, and that therefore the period of one year mentioned in the order appointing said Receiver will expire on the 26th day of January, 1919, and the Court being further advised in the premises, it is

Ordered, adjudged and decreed that the Special Master appointed under the terms of the final decree in this cause, do proceed to advertise all of said property mentioned in said decree and sell the same pursuant to the terms thereof, on the first Monday in February, 1919, and the said Special Master will report his doings in this behalf to the Court.

Done and ordered at Chambers at Ocala, Florida, this the 11th day of December, 1918.

W. S. BULLOCK,
Judge.

A true copy of the original, filed January 31st and recorded February 1st, 1919.

P. H. NUGENT,
Clerk.
By RUTH ERVIN,
D. C.

Dec. 11th, 1918.

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H. S. Cummings, Esq., Receiver,
Rodman, Fla.

DEAR SIR:

We beg to hand you herewith copy of order made today by Judge Bullock for the sale of the Ocklawaha Valley Railroad.

We sincerely hope that you may be interest- in the purchase of this road and we can assure you that we stand ready to co-operate to that end, in every way possible.

Yours very truly,

HOCKER & MARTIN,
By ———.

W. H./j.

Nov. 30th, 1918.

H. S. Cummings, Esq., Receiver,
Rodman, Fla.

DEAR SIR:

Under the last order of the Court you were required to pay the cost of advertising the sale of the O. V. Railroad, which cost amounted to \$60.00. As a matter of fact, the regular rates amounted to a little bit more than this but we made a special arrangement with the newspapers in both counties.

The order which appointed you Receiver gave you 60 days in which to begin the operation of the road and while there is nothing in the record that shows the exact date when you did begin operation, the reports filed by you show receipts and expenses beginning on the 26th day of January. Therefore, we presume that you began operation of the road on or before the 26th of January last. We will therefore, ask Judge Bullock to permit the sale of the road under the decree, on the first Monday in February and immediately thereafter make application for your discharge as Receiver. If we have misunderstood the date when you did begin operation of

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the road, please advise us immediately, otherwise we will presume that this is the correct date.

Yours very truly,

HOCKER & MARTIN,
By ———.

W. H./j.

Rodman, Florida,
Dec. 3rd, 1918.

Hocker and Martin,
Attorneys at Law,
Ocala, Florida.

GENTLEMEN:

Replying to your letter Nov. 30th, beg to advise that operations were resumed under the Receivership Jan. 26th, 1918.

Referring to advertising bill of \$60.00. Kindly have bill rendered by papers who carried this advertisement and greatly oblige,
Yours truly,

H. S. CUMMINGS,
Receiver.

T. B.

211 On January 30th, 1919, The State of Florida filed the following petition for intervention:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

W. S. HOOD, as Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendants.

Now comes the Railroad Commissioners of Florida in the name of the State of Florida, by Dozier A. De Vane, S. J. Hilburn and E. E. Haskell, special counsel for the railroad Commissioners, and files this its petition for intervention in the above entitled cause. This intervenor represents unto the court that under the laws of the State of Florida, all questions of service and operation of common carriers are under the jurisdiction of the Railroad Commissioners of Florida. That under the laws of Florida no railroad company can discontinue or change its service except upon petition to and authority from said railroad Commissioners. That under and by virtue of a decree of court that the complainant has obtained in this cause, the property of the defendant sought to be sold by this suit, may be sold with the authority from this court to the purchaser to discontinue the operation of the railroad and to dismantle and junk the same.

Wherefore, this intervenor says that it has an interest in this suit and prays an order of the court in the premises, authorizing it to intervene in said cause.

DOZIER A. DE VANE,
S. J. HILBURN,
E. E. HASKELL,
Solicitors for Intervenor.

212 A true copy of the foregoing received this January 30th,
1919.

HOCKER & MARTIN,
Complainant's Solicitors.

On January 30th, 1919, the complainant filed the following notice:

In Circuit Court, Fifth Judicial Circuit of Florida, in and for Marion County. In Chancery.

W. S. Hoop, as Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation,
etc., Defendant.

To Messrs. Hocker & Martin,

Counsel for the complainant in the above styled cause:

You will please take notice that on next Saturday, the 1st day of February, 1919, at two o'clock P. M., or as soon thereafter as counsel can be heard, at Ocala, Florida, or wherever the Judge of said Court may then be, within his said circuit, the Railroad Commissioners of Florida, through *its* special counsel will apply to the Hon. W. S. Bullock, Judge of said Court, for the privilege of intervening in the above styled cause, seeking a modification of the decree of court rendered in the above styled cause to the extent that that portion of said decree authorizing the junking of the railroad described in said decree, and discontinuing operations of said road, may be eliminated from said decree; and for such other relief in the premises as may be appropriate and necessary to secure the continuation of said railroad.

213 We are enclosing herewith a copy of the petition of intervention above referred to.

You are further notified that at the time and place above stated, should the court grant the petitioner the privilege to intervene, that a further petition seeking the relief desired as above expressed, will be presented to said court and a hearing thereon had before said Judge.

We are also enclosing herewith a copy of the petition last referred to, and a copy of the report of the receiver covering such items as have not heretofore been reported to the court and of which you have knowledge, which are not on file in this case.

This the 30th day of January, 1919.

DOCIER A. DE VANE,
S. J. HILBURN,
E. E. HASKELL,
Counsel for Petitioner.

A true copy of the foregoing received this Jan. 30th, 1919.

HOCKER & MARTIN,
Complainants' Solicitors.

On February 1st, 1919, the court made the following order:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and
for Marion County. In Chancery.

W. S. HOOD, as Trustee, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, et al.,
Defendants.

214 This cause came on this day to be heard on motion of the
State of Florida on behalf of the Railroad Commission of
Florida, for leave to file its bill of intervention in this cause, and
after argument by Dozier A. De Vane, S. J. Hilburn, and E. E.
Haskell, as Counsel for the said railroad commission, and E. H.
Martin as Counsel for the complainant, it is

Considered and ordered that the said motion for leave to file such
bill be and the same is hereby denied.

Done and ordered at Chambers at Ocala, Florida, this February
1st, 1919.

W. S. BULLOCK,
Judge.

On February 1st, 1919, the Railroad Commissioners of the State
of Florida, filed entry of appeal as follows:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and
for Marion County. In Chancery.

WM. S. HOOD, Trustee, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, et al.,
Defendants.

Comes now the Railroad Commissioners of the State of Florida,
in the name of the State of Florida, and enters an appeal in the
above styled cause from the order of the court made herein on
February 1st, 1919, denying to the state of Florida the right to
intervene in said cause, said appeal being made returnable to the

215 Supreme Court of the State of Florida, at Tallahassee, Florida, on Saturday, the first day of March, 1919, the same being a day in the January term of said court.

DOZIER A. DE VANE,

S. J. HILBURN,

E. E. HASKELL,

Solicitors for Intervenor.

On February 1st, 1919, the Railroad Commissioners filed the following petition for intervention:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

W. S. Hoop, as Trustee, Complainant.

VS.

Ocklawaha Valley Railroad Company, a Corporation, etc.,
Defendants.

The State of Florida on behalf of the Railroad Commission of Florida, by Dozier A. De Vane, S. J. Hilburn and E. E. Haskell special counsel, files this its bill of intervention in the above entitled cause, permission of the court being first had and obtained. Whereupon intervenor represents unto the court as follows:

First. That the Railroad Commissioners of Florida are by the laws of Florida authorized and empowered to regulate all common carriers within the state of Florida. That as a part of the duties of the Railroad Commissioners of Florida, it is their duty to see that all railroads granted charters within the state of Florida, or operating within the state of Florida, continue the operation of their respective properties and render service to the public, as such common carriers for hire.

216 Second. That under the laws of Florida and the rules of the Railroad Commissioners of Florida, duly and lawfully promulgated and adopted, no railroad company in the state of Florida is authorized to discontinue operation of trains on its road and abandon service, without application to the Railroad Commissioners of Florida, and their approval thereof.

Third. That upon the efforts of the Railroad Commissioners in a suit pending in this court, in which the State of Florida was complainant and the Ocklawaha Valley Railroad Company was defendant, the State of Florida assisted in procuring the appointment of a receiver for the Ocklawaha Valley Railroad Company in this cause, which receiver was authorized by this court to operate said railroad for a period of one year for the purpose of demonstrating to the court whether or not said railroad could be operated as a com-

mon carrier without material loss to the owners or stockholders of said Company. That under a decree of this court, H. S. Cummings has been acting for the court as its receiver in this behalf, and the intervenors hereto attach a report of the operation of said railroad by the said H. S. Cummings, Receiver, covering a period of approximately 11 months, which is hereto attached marked exhibit A and made a part hereof, which your intervenor alleges shows unto this court that said railroad may be operated without material loss to the stockholders of said company.

Fourth. That it is provided in and by the decree of this Honorable court, made in the above entitled cause on the 24th day of December, 1917, that unless said property sells for an amount specified therein as a common carrier, and the purchaser declares the intention at the time of said purchase to operate said road as a common carrier, that said property may be then sold for junking purposes; and your intervenors represent unto your Honor that that part of said decree of the court is illegal and void and should be set aside and the Master heretofore appointed by this court to make the sale of said property, be notified by this court before said property is sold, to disregard that provision of said decree, and to sell said property as a common carrier, without any reference whatever to the rights of the purchaser of said property to junk the same, or to dismantle and tear up said road and discontinue the operation of the same as a common carrier.

Wherefore, your intervenor prays, etc.

DOZIER A. DE VANE.
S. J. HILBURN.
E. E. HASKELL.

Trial Balance.

Ocklawaha Valley Railroad Company.

H. S. Cummings, Receiver, December, 1918.

Material and supplies.....	1,116.69	
Surplus		687.50
Vouchers payable		893.37
Operating expense.....	49,452.42	
Road & equipment.....	97.97	
Hire of equipment.....	6,033.60	
Joint facility rents.....	1,861.10	
Bills receivable	322.83	
Miscellaneous revenue		1,818.17
Hire equipment susp.....		2,619.20
Operating reserves		743.31
Audited payrolls		1,986.69

War tax	277.64	
C. A. Harris	5.69	
C. E. Thigpen	68.80	
R. O. Morrison	7.42	
J. A. Richey		1.20
J. P. Ward .....	.30	
G. C. Zeigler	5.40	
U. S. Mail service	511.01	
218 Passenger revenue		8,891.88
Freight earnings		50,127.02
Government freight	177.15	
Water tank	72.01	
Rodman "Y"	398.66	
Disb. Agent I. C. C.	3.30	
Ft. McCoy depot	484.50	
Mills boat line	22.89	
Office furn. & Fixt.	116.50	
Freight claims	50.71	
O. V. old acct.	12.91	
Hands O. D. acct.	8.25	
Mail earnings		1,681.68
Foreign cars repaired.		14.29
Stock claims	221.50	
Liberty bonds	1,000.00	
O. N. Jet. Impvt.	300.55	
Insurance	195.00	
Legal services	60.00	
Ft. McCoy depot	71.40	
New motor car	524.57	
On hand freight sold.		34.18
R. O. Morrison	38.86	
C. P. Pillans	65.37	
W. L. Cowart	17.86	
H. S. Cummings, Rec.	3,500.00	
Loss and damage c.	37.25	
Cash in state bk. Pal'ka.	2,912.96	
	69,776.13	69,776.13

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Statement.

Statement Showing Amount Expended on Maintenance and Repairs to Roadway and Equipment, Jan. 26th to Sept. 30th, 1918, Inclusive, also Betterments.

Roadway:

Labor	7,691.81	
Superintendence	880.00	
Supplies	572.88	
Cross ties	5,927.70	
Bridge material used rebuilding Silver Springs bridge	1,024.13	
		<u>\$16,096.52</u>

Equipment:

Coaches—

Labor	842.27	
Material	448.77	
		<u>1,296.04</u>

Locomotives—

Labor	1,648.83	
Material	897.71	
Supt.	654.10	
		<u>3,200.64</u>

Motor Cars—

Labor	43.75	
Material	217.92	
		<u>261.67</u>
		<u>4,758.35</u>

Total..... 20,854.87

Betterments:

Water tank, Bay Lake	72.01	
Rodman "Y" at Rodman Jet	398.66	
Depot at Ft. McCoy	484.50	
Office Furniture	108.00	
New Motor car #1000	230.28	
O. N. Jet, improvements	300.55	
Cutting down grade at Ft. McCoy ..	71.40	
		<u>1,665.40</u>

*Statement of Earnings and Operating Expenses, Ocklawaha Valley
Railroad Co., January 26th, to 31st, Inc., 1918.*

Earnings:

Passenger revenue	147.15	
Freight earnings	537.78	
Miscel. revenue	3.00	
		<u>\$706.93</u>

Operating expenses:

M'n'te' roadway—		
Cross ties	242.15	
220 Section crews	224.00	
		<u>466.15</u>
Transportation—		
Enginemmen & trainmen		
payroll	108.00	
Wood for loco.	50.05	
Pumping water	3.00	
		<u>\$170.05</u>
Other expenses—		
Gen. expense	33.30	
Supplies	6.31	
Est. track rent.	13.87	
Supt. and desp.	67.00	
Agencies	26.10	
Mnte. equipment	41.60	
" "	17.30	
" "	12.05	
		<u>217.53</u>
Hire of equipment.		47.40
Joint facility rent.		<u>27.73</u>
		<u>928.86</u>
Loss on operations		<u>221.93</u>

*Statement of Earnings and Operating Expenses, Ocala and Valley
Railroad Co., Feb. 1918.*

Earnings:

Freight earnings	\$3,974.31	
Passenger revenue	749.28	
Interline freights (gross)	233.64	
Misc. revenue	77.00	
	<hr/>	\$5,034.43

Operating expense:

Maintenance ways and structures—

Supplies	34.96	
Labor section crews	763.42	
Supd. roadway	100.00	
Cross ties	1,144.63	
Bridge material	1,024.13	
	<hr/>	3,066.54

Transportation—

Trainmen payroll	276.16	
Engineers "	184.85	
Fuel for locomotives	413.29	
Supplies	9.80	
	<hr/>	884.00

Maintenance equipment—

Locomotive repairs	313.88	
Couch repairs	113.35	
221 Motor cars	52.53	
	<hr/>	479.80

Other expenses—

Supd. mainten'ce, eqpt.	169.18	
Superintendence	150.00	
Office expenses & Supd.	184.50	
Agencies	195.60	
General expense	114.64	
Miscellaneous	5.59	
Joint facility rent	250.00	
Material used	159.85	
Hire of equipment	494.80	
	<hr/>	1,724.16
		<hr/>
		6,154.65

Loss on operations

1,120.22

Note in ways and structures items of cross ties and bridge material, this being used to rebuild the Silver Springs Bridge and charged directly to operating expense.

*Statement Earnings and Operating Expenses, Ocala and Valley
Railroad Company, March, 1918.*

Earnings:

Freight earnings	4,006.58	
Passenger revenue	965.78	
Interline freights (Gos.)	101.61	
Misc. revenue	107.85	
	<hr/>	5,181.82

Operating expenses:

Misc. ways & structures—

Section crews payroll	781.36	
Supt. roadway	100.00	
Cross ties	326.38	
Supplies	53.17	
	<hr/>	1,260.91

Transportation—

Trainmen payroll	299.75	
Engineers "	220.14	
Fuel for loco.	403.72	
Pumping Feb. & Mar.	37.00	
222 Hire of extra loco	15.45	
	<hr/>	976.06

Maintenance equipment—

Repairs locomotive	309.74	
" coaches	205.81	
Superintendence	87.50	
Repairs to motor cars	9.46	
	<hr/>	812.51

Other expenses—

General expense	24.53	
Superintendence	150.00	
Car inspector	43.65	
Office expense	156.00	
Agencies	170.00	
Joint facility rents	250.00	
Hire of equipment	635.40	
Material used	236.15	
	<hr/>	1,665.13
	<hr/>	4,714.61
Gain		467.21

*Statement Earnings and Operating Expenses, Ocala and Valley
Railroad Company, April, 1918.*

Earnings:

Freight earnings	4,474.75	
Passenger revenue	831.00	
Misc. revenue	5.70	
U. S. mail earnings	198.00	
		<u>5,520.55</u>

Operating expenses:

Maintenance ways and struct.—

Section crews payroll	805.60	
Supr. roadway	100.00	
Crews	543.42	
Supplies	15.43	
Fuel for motor cars	26.30	
		<u>1,580.75</u>

Transportation—

Trainmen payroll	300.00	
Engineers	225.55	
Fuel for loco	114.33	
Pumping	25.00	
Supplies	4.70	
Water rent, ice, etc.	53.00	
		<u>1,031.07</u>

Maintenance equipment—

Supplies	116.57	
Shop crew payroll	391.15	
223 Shop equipment	87.50	
		<u>595.22</u>

Other expenses—

Agencies	204.28	
Superintendent	150.00	
Office Expense	150.00	
Joint facility rents	250.00	
Hire of equipment	499.80	
Gen. expense	71.75	
Telephone repairs	26.50	
		<u>1,358.32</u>
		<u>4,565.41</u>

Gain

954.94

*
*Statement Earnings and Operating Expenses, Ocklawaha Valley
 Railroad Co., May, 1918.*

Earnings:

Freight earnings	4,408.68	
Passenger revenue	966.42	
Miscellaneous revenue	114.91	
Mail Earnings	186.20	
		5,676.21

Operating expenses:

Maintenance Ways & Struct.—

Section Crew Pay-roll...	865.49	
Supt. Roadway	100.00	
Cross Ties	482.10	
Supplies	56.42	
Fuel for Motor Cars....	19.84	
Extra Track wk.	13.70	
		1,537.55

Transportation—

Trainmen pay-roll.....	309.20	
Enginemen "	228.35	
Fuel for Loco.....	420.69	
Pumping	25.00	
Water Rent, etc.....	24.04	
		1,007.28

Mnte. Equipment—

Repair to Eqpt.	186.80	
Mnte. "	162.10	
Supt.	87.50	
Lumber, Sup., etc.....	203.38	
Shop work & Material..	39.70	
		679.48

Other Expenses—

Agencies	200.40	
Superintendence	150.00	
Office Expense	156.00	
Joint facility rent.....	250.00	
Hire of equipment.....	531.00	
General Expense	3.90	
Stamps	21.00	
Premium on Ins. Bnds..	19.40	
R. R. Guide & Eqpt. Reg.	31.12	
Fees Am. S. L. R. R.		
Assn.	10.00	
Office rent two months..	10.00	
Phone Rent.....	8.70	
		1,391.52
		4,615.83

Gain	1,060.38
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224 *Statement of Earnings & Operating Expenses, Ocklawaha Valley Railroad Co., June, 1918.*

Earnings:

Freight earnings	4,480.62	
Passenger revenue	1,082.99	
Miscellaneous rev.....	334.04	
Mail earnings	186.20	
		<u>6,083.85</u>

Operating Expense:

Mnte. way and structures—		
Section crew's payroll...	1,082.09	
Supt. roadway	105.00	
Cross ties	963.56	
Fuel for motor cars.....	39.46	
Supplies	19.54	
		<u>2,209.65</u>

Transportation—

Trainmen pay roll.....	303.25	
Enginemen "	231.35	
Fuel for loco.....	429.20	
Pumping	26.00	
Supplies, water rent, etc.	68.10	
		<u>1,057.90</u>

Mnte. Equipment—

Labor pay roll.....	265.40	
Supt. Eqpt.	87.50	
Supplies	8.50	
Material for supplies....	137.03	
		<u>498.43</u>

Other expenses—

Superintendence	160.00	
Office expense	161.00	
Joint facility rents.....	250.00	
Hire of equipment.....	577.20	
General expense	19.26	
Mail service (payroll)...	46.00	
Inspection	16.00	
Repairs telephone line..	23.62	
Express on Ocala Rents.	1.08	
Supplies for office.....	15.00	
Office rent	5.00	
Sup. eqt. register.....	20.00	
Stamps	12.00	
Telephone and teleg....	23.36	
Agencies	198.41	
		<u>1,527.93</u>
		<u>5,293.91</u>

Gain..... 789.94

225 *Statement of Earnings and Operating Expenses, Ocklawaha Valley Railroad Co., July, 1918.*

Earnings:

Freight earnings	4,990.65	
Passenger revenue	790.07	
Miscel. revenue	252.15	
Mail earnings	186.20	
		6,219.07

Operating Expense:

Mnte. ways and structures—

Section crews' payroll...	1,331.30	
Supt. roadway	125.00	
Cross ties	1,035.66	
Fuel for motor cars.	33.35	
Supplies and tools.	86.89	
Misc. supplies	22.92	
		2,685.12

Transportation—

Trainmen's pay roll.	380.20	
Enginemen " "	237.85	
Fuel for loco.	541.92	
Pumping	30.00	
Supplies	57.70	
		1,247.67

Mnte. equipment—

Labor Payroll	245.20	
Supt. equipment	87.50	
Supplies	7.95	
		340.65

Agencies—

Salaries	207.33	
Supplies	26.94	
		234.27

Other expenses—

Superintendence	200.00	
Office expense	181.50	
Mail service payroll.	15.00	
Joint facility rents.	250.00	
Hire of equipment.	603.60	
Am. S. L. Assn.	7.55	
Stamps	15.00	
Publishing new tariffs. .	213.94	
Telephone service	14.92	
Telegraph service	3.83	
General expense	3.50	
Office supplies	10.00	
Express on Ocala Rempt. & Dis.	1.93	
		1,520.77

6,028.48

Gain.....

190.59

226 *Statement of Earnings and Operating Expenses, Ocklawaha Valley Railroad Co., August, 1915.*

Earnings:			
Freight earnings	4,800.97		
Passenger revenue	805.73		
Miscellaneous revenue	157.45		
Mail earnings	186.20		
			5,950.35
Operating Expenses:			
Maintenance ways and structures—			
Section crews' pay roll...	934.40		
Supt. roadway	125.00		
Cross ties	775.00		
Fuel & Sup. for motor cars	95.53		
		1,929.93	
Transportation—			
Trainmen pay roll.....	414.75		
Enginemen " "	223.00		
Pumping	30.00		
Fuel for loco.....	561.69		
Supplies, ice, etc.....	71.11		
Stationery	10.95		
		1,311.50	
Mnte. equipment—			
Labor pay roll.....	336.40		
Supt. equipment	87.50		
Repairs, material & Sup.	235.42		
Stationery	2.95		
		662.27	
Agencies—			
Salaries	205.00		
Stationery	22.96		
		227.96	
Other expenses—			
Superintendence	200.00		
Office expense	181.50		
Mail service	15.00		
Telephone repairs	28.00		
Stamps	9.00		
Premium on ag't's policy.	2.00		
Express on supplies....	5.31		
Misc. expense vou. 78.	10.00		
Expense Benard Wash- ington	66.50		
Telephone & telegraph..	16.05		
Tariffs and misc.....	6.73		
Express on remit. Ocala.	1.29		
Stationery office	29.55		
Hire of equipment.....	637.80		
Joint facility rents.....	250.00		
		1,458.73	
			5,590.39
Gain.....			359.96

We used during the month 246 cars at an average of \$2.59 per car.

227 *Statement of Earnings and Operating Expenses, Oklahoma Valley Railroad Company, Sept., 1918.*

Earnings:

Freight earnings	\$4,103.52	
Passenger revenue	644.00	
Misc. revenue	160.20	
Mail earnings	186.20	
		5,093.92

Operating Expenses:

Maintenance ways & Streets.—

Section payrolls	814.15	
Supt. roadway	125.00	
Cross ties	365.40	
Fuel for motors	49.28	
Supplies	6.00	
		1,359.92

Transportation—

Trainmen pay roll	391.57	
Enginemen " "	219.45	
Pumping	30.00	
Fuel for loco.	401.96	
Stationery etc.	13.31	
Ice, water, rent, etc.	25.14	
		1,081.43

Mnte. equipment—

Labor payroll	331.09	
Material & supplies	196.63	
Supt. equipment	87.50	
Stationery	3.76	
		618.98

Agencies—

Salaries	205.80	
Supplies	11.35	
		217.15

Other expenses—

Superintendence	200.00	
Office expense	181.50	
Mail service	55.00	
Telephone repairs	11.00	
Joint facility rents.	250.00	
Hire of eqpt.	450.60	
Office stationery	12.00	
Stamps	18.00	
Tariffs	10.00	
General expense	9.57	
Telephone service	11.71	
		1,209.47

4,486.95

Gain..... 606.97

We used 217 cars during the month, after deducting demurrage collected made an average of \$1.85 per car.

228 *Statement of Earnings and Operating Expenses, Oklawaha Valley Railroad Company, October 31st, 1918.*

Earnings:			
Freight earnings	4,439.32		
Passenger revenue	542.59		
Mail earnings	179.38		
Misc. revenue	221.65		
			5,382.94
Operating Expenses:			
Maintenance ways & Strcls.—			
Section pay rolls	1,027.05		
Supt. roadway	125.00		
Cross ties	528.40		
Fuel for motor cars	87.26		
Supplies	7.34		
		1,775.05	
Transportation—			
Trainmen pay roll	400.10		
Enginemen " "	289.75		
Pumping	30.00		
Fuel for loco.	537.35		
Supplies	53.69		
		1,310.89	
Maint'nce equipment—			
Labor pay roll	191.00		
Material & Sup.	88.58		
Supt. equipment	87.50		
		367.08	
Agencies—			
Salaries	167.50		
Supplies	9.00		
		176.50	
Other expenses—			
Superintendence	200.00		
Office expense	181.50		
General expense	44.21		
Telephone repairs	29.00		
Joint facility rents	250.00		
Hire of equipment	496.80		
Office stationery	12.79		
Stamps	18.00		
Telephone & telegraph ..	26.09		
Occupational tax pal.	50.00		
Bureau of explosives	12.50		
Tariffs	20.00		
Am. short Line Assn.	25.85		
Office rent	5.00		
		1,371.74	
			5,001.26
			381.68

We used 228 cars during the month, taking credit for \$75.00 demurrage would make an average of \$1,805 per car.

229 *Statement of Earnings and Operating Expenses, Oklawaha Valley Railroad Co., November, 1918.*

Earnings:			
Freight earnings	.....	5,152.81	
Passenger revenue	.....	547.59	
Mail earnings	.....	186.20	
Miscl. revenue	.....	244.47	
			6,131.07
Operating Expense:			
Mainte. ways and structures—			
Section pay rolls	.....	866.30	
Supt. roadway	.....	125.00	
Cross ties	.....	237.60	
Fuel for motors	.....	77.45	
Supplies	.....	12.00	
			1,318.35
Transportation—			
Trainmen pay roll	.....	371.80	
Enginemen " "	.....	345.14	
Pumping	.....	30.00	
Fuel for loco.	.....	501.21	
Supplies, etc.	.....	92.65	
			1,340.80
Maint c. equipment—			
Labor pay roll	.....	343.72	
Material & supplies	.....	163.29	
Supt. equipment	.....	87.50	
Supplies	.....	5.95	
			600.46
Agencies—			
Salaries	.....	156.60	
Supplies	.....	39.00	
			195.60
Other expenses—			
Superintendence	.....	200.00	
Office expense	.....	181.50	
General "	.....	55.23	
Mail service	.....	30.00	
Joint facility rents	.....	250.00	
Hire of equipment	.....	566.00	
Office stationery	.....	43.98	
Stamps	.....	9.00	
Tele. & telegraph	.....	22.99	
Office rent	.....	5.00	
Tariffs, etc.	.....	18.68	
Advertising	.....	12.75	
Insurance	.....	165.00	
			1,560.13
			5,015.34
Gain			1,115.73

We used 266 cars for the month, making average of \$2.12-9/11 per car.

230 *Statement of Earnings and Operating Expenses, Oklawaha Valley Railroad Co., December, 1918.*

Earnings:

Freight earnings	4,435.44	
Passenger revenue	837.75	
Misc. revenue	140.75	
Mail service	186.20	
		<u>5,600.14</u>

Operating Expenses:

Maintenance ways and structures—

Section crew P. R.	690.80	
Supt. & Roadway	125.00	
Cross ties	401.00	
Fuel for motor car	47.13	
Supplies	24.12	
		<u>1,288.05</u>

Transportation—

Trainmen pay roll	408.70	
Enginemmen	324.50	
Pumping	30.00	
Fuel for Locos	666.86	
Supplies	66.52	
		<u>1,496.58</u>

Mnte. equipment—

Labor pay roll	289.17	
Material & supplies	220.12	
Supt. equipment	87.50	
Supplies	28.20	
		<u>624.99</u>

Agencies—

Salaries	157.80	
Supplies	14.27	
		<u>172.07</u>

Other expenses—

Superintendence	200.00	
Office expense	181.50	
General "	13.21	
Mail service	15.00	
Joint facility rents	250.00	
Hire of equipment	493.20	
Office supplies	20.65	
Telephone & telegraph ..	21.96	
Rent depot at Rodman ..	30.00	
Gov. utilities tax	56.04	
Adv't sale Nov. 4	60.00	
Office rent	5.00	
Telephone repairs	12.00	
		<u>1,358.56</u>
		<u>4,940.25</u>

Gain

659.89

Jan. 25 to Sept. 30, 1918, ties purchased 13,454—\$5927.70, all put in track.

231 On February 1st, 1919, complainant filed the following affidavit:

In the Circuit Court of Marion County, Florida. In Chancery.

W. M. S. Hoon, Trustee, Complainant,

VS.

OCKLAHAWA VALLEY RAILROAD COMPANY et al., Defendants.

STATE OF FLORIDA,
County of Marion:

Before me the undersigned authority, personally appeared Wm. Hocker, who being by me first duly sworn deposes and says: that affiant is one of the attorneys for the complainant in the above styled suit; that the Comptroller of the state is now claiming and has been for some months past, demanding payment of the sum of \$6,624.58 for taxes on the property involved in this suit for the year 1917, which according to the claim of the Comptroller became due and collectible in the spring of 1918; that affiant is informed and believes that the said comptroller further claims about \$6,000 for state and county taxes assessed against said property for the year 1918, and that if these tax claims are correct there is now due and owing the said Comptroller the said sum of \$6,624.58, and within the next three months there will be owing to him an additional amount of about \$6,000. That in addition to the property taxes above mentioned, that if the said railroad is operated in any way except under the receivership, the license taxes against the same would amount to about \$1,000 for the years 1917 and 1918; that in the opinion

232 of affiant the said taxes appear to be grossly excessive, discriminatory and confiscatory, but the validity of same is asserted by the state. That the suit instituted in the name of the state, as referred to in a certain petition of intervention filed in this cause, in which suit certain officers undertaking to use the name of the state to compel the operation of the road, resulted in final adjudication against the state by a decree rendered by this court in the early summer of 1918, after the taking of the testimony of a large number of witnesses on all the material questions necessary to determine the practicability of the continuance of the operation of said road, and that such decree so rendered by this court was made pursuant to and in conformity with the report of the Special Master who took all of such testimony and reported adverse to the contention of the state of Florida, as put forth and maintained in said bill. That this property was advertised for sale under order of this court on the November rule day, 1918; that notwithstanding the fact that H. S. Cummings has abundant notice of such advertisement of sale in November last, and consulted and notified all of the same attorneys who now undertake to intervene in behalf of the state, they made no application to the court until two or three days before the rule

day in November, 1918, and that there was then present in Ocala two or three different prospective buyers who came from remote points for the purpose of bidding on such property and affiant is informed and believes that they intended to bid and would have bid at that time about \$200,000 for the property involved in this suit that such prospective bidders had made a complete examination of the property, had complete itemized schedules of all the property involved herein; that affiant is informed and believes that if in any event this property is to be scrapped and dismantled at an early date,

it cannot now be sold for exceeding \$150,000, if that much;
 233 that when this property was advertised for sale in the early spring of 1918, there were numerous prospective bidders who appeared here pending the advertisement of sale and requested schedules of the property and made examination of same, and to a less extent the same was true pending the advertisement for sale in November, 1918, but up to the present time, not a single prospective bidder has made any inquiry at affiant's office, or appeared at affiant's office pending the present advertisement of sale, and that affiant is informed and believes that within the last few months there has been an enormous shrinkage in the value of the class of property involved in this suit and a general shrinkage in the values of all railroad properties, for operation or other purposes.

WM. HOCKER.

Sworn to and subscribed before me this the 1st day of February, 1919.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

* On February 1st, 1919, the State of Florida filed the following paper:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WALTER S. HOOK, as Trustee, Complainant.

VS.

OCKLAHAMA VALLEY RAILROAD COMPANY, a Corporation,
 Defendant.

234 The State of Florida, intervenor in the above entitled cause, suggests further to the court that the decree of sale entered in the above entitled cause on December 11th, 1918, was filed and enrolled with the Clerk of this Court on January 31st, 1919, and that no sale of the property advertised to be sold thereunder at the direction of this court on the rule day in February, 1919, can be had.

Wherefore, this intervenor prays that in such additional decree as shall be made by the court in the premises directing the future

sale of said property, the Master of this court will be directed to sell said property as a common carrier and that part of the decree of this court of December 24th, 1917, authorizing the sale of said property with authority of the purchaser to dismantle, take up and remove said property, be set aside.

And your intervenor will ever pray.

DOZIER A. DE VANE,
S. J. HILBURN,
E. E. HASKELL,

Solicitors for Intervenor.

On the 10th day of February, 1919, the State of Florida filed the following bill of intervention:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

W. S. HOOD, as Trustee, Complainant.

VS.

OKLAHAWA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendants.

235 Now comes R. Hudson Butt, Newton A. Blitch and Royal C. Dunn, as Railroad Commissioners of Florida, in the name of the State of Florida, by Dozier A. De Vane Special Counsel for the Railroad Commissioners, assisted by S. J. Hilburn, and E. E. Haskell, and files this intervention in the above entitled cause, authority of the court first being granted and represents unto the court as follows:

First. The Railroad Commissioners of Florida are by the law of Florida, authorized and empowered to regulate all common carriers within the state of Florida; That as a part of the duties of the Railroad Commissioners of Florida, it is their duty to see that all railroads operated within the state of Florida continue the operation of their respective properties and render service to the public as such common carriers for hire. And it is further provided that if any railroad company or common carrier doing business in the state, shall, in violation or disregard of any rule, rate or regulation provided by the commission, inflict any wrong or injury upon any person, it shall be the duty of the Railroad Commissioners, if requested by such injured person, to institute proceedings to compel restriction; and that the commissioners have been requested by the patrons of the defendant Oklawaha Valley Railroad Company to compel the continued operation of said railroad Company as a common carrier for hire.

Second. That under the laws of Florida and the rules of the Railroad Commission, duly and lawfully promulgated and adopted, no railroad company in the state of Florida is authorized to dis-

continue operation of trains on its road or to abandon service without application to the Railroad Commissioners and their approval thereof.

236 Third. That the Ocklawaha Valley Railroad Company is a corporation operating a line of railroad as a common carrier for hire from Silver Springs, in Marion County, Florida, to Palatka, in Putnam County, Florida; and that the line of railroad of the said Railroad Company is entirely within the state of Florida.

Fourth. That upon the efforts of the Railroad Commissioners in a suit pending in this Court, in which the state of Florida was complainant, and the Ocklawaha Valley Railroad Company was defendant, the Railroad Commissioners assisted in procuring the appointment of H. S. Cummings as receiver for the Ocklawaha Valley Railroad Company in this cause, which receiver was authorized by this court to operate said railroad for a period of one year, for the purpose of demonstrating to the court whether or not said railroad could be operated as a common carrier without material loss to the owners or stockholders of said company. That under the decree of this court the said H. S. Cummings has been acting for the court as its receiver in this behalf, and has operated said property for said period of one year and has expended approximately \$27,000.00 in betterments and improvements on said property. That when he was appointed receiver of said property the same was in bad condition and the officials of said property stated under oath that said property could not be operated as a common carrier, except by the expenditure of a sum of money far in excess of the sum expended by said receiver. Nevertheless, the said receiver of this court has demonstrated that said property may be operated as a common carrier without material loss to the said defendant. The said H. S. Cummings, as receiver of this court, has from time to time made reports to this court of all his doings as a receiver, and this intervenor prays an examination of the said H. S. Cummings, as receiver, and an investigation of his operation, before the confirmation of sale of the property sold under decree of this court in the premises.

237 Fifth. That it was provided in and by the decree of this Honorable Court made in the above entitled cause on the 24th day of December, 1917, that unless said property sold for an amount specified therein as a common carrier and the purchaser declared his intention at the time of said purchase to operate said property as a common carrier, that said property could then be sold for junking purposes, and your intervenors represent unto your Honor that that part of said decree of the court authorizing sale of said property as junk, is illegal and void, and should be disregarded by this court; and that no sale of said property, under said provision of said decree, should be confirmed by the court, but that the purchaser of said property should be required to resort to the remedy afforded by law for any relief from operation as a common carrier; and that said property should be sold without any reference whatever to the rights of the purchaser of said property to junk or dismantle and tear up said road, and discontinue operation of same as a common carrier.

Sixth. Your intervenor further represents unto your Honor that at the sale of said property, under the authority of the decree of this court, of December 24th, 1917, which sale was had on February 2d, 1919, there was no offer made for the purchase of said property as a common carrier for hire, and that under the second offering of said property the only bid made for same was the bid of the Assets Realization Company. That the said Assets Realization Company is in truth and in fact, the real complainant in this suit. That the President of the Assets Realization Company and the person offering said bid on behalf of said company, is the President of the Oklawaha Valley Railroad Company, and your petitioners allege and charge that the interest of the defendant and complainant are the same.

Seventh. Your intervenor further represents unto the court that prior to the institution of the above entitled foreclosure suit, 238 the defendant, the Oklawaha Valley Railroad Company, threatened to discontinue operation as a common carrier for hire, and that upon its intention in that behalf being brought to the attention of the Railroad Commission, a bill for injunction was filed by this intervenor against the said Oklawaha Valley Railroad Company and a temporary injunction issued out of the Circuit Court of Putnam County, Florida, enjoining the said defendant from discontinuing operation as a common carrier, and that thereafter this suit for foreclosure was instituted. These intervenors allege, upon information and belief, that prior to the institution of this suit, the said Oklawaha Valley Railroad Company had entered into negotiations for the sale of its property as junk, and at that time intended to cease operation and to junk said property. That the condition of said property alleged by the defendant to exist, had been permitted by defendant to occur so that it might become impossible to operate said property as a common carrier, and that the said defendant might be permitted to junk the same. In that connection your intervenors call the attention to this court of the unusual and abnormal value of railroad iron existing by reason of the state of war, which then existed, which caused the said property of said railroad company to be of more value to its owners as junk than as a common carrier.

Eighth. Your petitioners further represent unto your Honor, that there is some relation between the Assets Realization Company, the Oklawaha Valley Railroad Company, the Florida Farms & Homes Company and the New South Florida Farms & Homes Company, and your intervenors represent that the relationship between said companies is important for a proper determination of this suit, and ask for an investigation of the same. That a large tract or tracts of land was owned by the said Florida Farms & Homes Company and the New South Florida Farms & Homes Company, along the 239 right of way of the said Oklawaha Valley Railroad Company. That a large part of said property has been sold to persons who now reside along said railroad by the said Land Companies, and that the said Land Companies have disposed of the larger part of their holdings along said road, and are no longer ma-

cially interested in the continued operation of the said Oklawaha Valley Railroad Company. That the existence of said railroad has always been an inducement to the purchasers of said property to purchase property along said railroad, in the belief that the same would be continued as a common carrier. Upon an investigation of the relation between the said Land Companies, the Assets Realization Company and the Oklawaha Valley Railroad Company, these interveners believe, and allege and charge, that this could will find the existence of a very close relationship and community of interest.

Ninth, By way of suggestion, these interveners represent unto the court that the decree of sale made on December 11th, 1918, directing the sale of said property on the rule day in February, 1919, was filed and enrolled with the Clerk of this court on January 31, 1919, and that under the statutes, no valid process can be had under said order of sale, until the same was filed and enrolled with the Clerk of this Court, and that the sale on the rule day in February, 1919, is void. By way of further suggestion to the court, these interveners represent that an appeal has been taken from the orders of this court appointing the said H. S. Cummings, receiver, and that said appeal is now in the Supreme Court of Florida.

Wherefore, your interveners being without remedy in the premises, except by way of intervention in this cause, pray that upon consideration of this their intervention in said cause, that this court will enter a decree in the premises disapproving the sale of said property made on the rule day of February, 1919, and directing a re-sale of said property to be sold as a common carrier. That this court will investigate the operation of its receiver in the premises and upon said investigation authorize the continued operation by said receiver until the further order of the court in the premises. That this court will investigate the relation and community of interest existing between the Assets Realization Company, the Oklawaha Valley Railroad Company, the Florida Farms & Homes Company and the New South Florida Farms & Homes Company, and all facts relating to the sale of said property as junk existing prior to the institution of the above entitled cause. And that upon a final determination of this cause, this court will leave to the determination of the interveners in this cause, the question of the operation of said railroad company as a common carrier. And for such other and further matters in the premises as shall be proper or necessary for determination by the court of the equities in the premises. And your petitioners will ever pray.

DOZIER A. DE VANE,

S. J. HILBURN,

E. E. HASKELL,

Solicitors for Interveners.

281 STATE OF FLORIDA,
County of Leon:

Before me, the undersigned authority, personally appeared Dozier A. De Vane, who being by me first duly sworn, deposes and says that he is Special Counsel for the Railroad Commissioners of Florida; that

he has read the foregoing intervention, and that the matters and things therein alleged to be true are true, and that the matters and things alleged upon information and belief to be true are true to the best of his information and belief.

DOZIER A. DE VANE.

Subscribed and sworn to before me this 7th day of February, A. D. 1919.

LEWIS C. THOMPSON,
Notary Public.

My commission expires Apr. 19, 1919. (N. P. Seal.)

On February 11th, 1919, the State of Florida filed the following petition for intervention:

242 In the Circuit Court of the Fifth Judicial Circuit in and for Marion County. In Chancery.

W. S. Hood, as Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendants.

Now comes the State of Florida by R. Hudson Burr, Newton A. Blitch and Royal C. Dunn, as Railroad Commissioners of Florida, by Dozier A. De Vane, Special Counsel for the Railroad Commissioners, assisted by J. S. Hilburn and E. E. Haskell, and files this their petition for intervention in the above entitled cause, and represents unto the Court as follows:—

First. That under the Laws of the State of Florida, all questions of service and operation of common carriers are under the jurisdiction of the Railroad Commissioners of Florida.

That under the laws of Florida, no Railroad Company can change or discontinue its service as a common carrier, except upon petition to and authority from the Railroad Commissioners of Florida.

Second. That the complainant is seeking in the above entitled cause to have this Court adjudge and decree authority in the purchase of the property sought to be sold under the decree of this Court, to discontinue the operation of the railroad herein foreclosed, and to dismantle and junk the same.

Third. That the provisions of the decree of the Court in the premises authorizing the purchaser to discontinue operation of said railroad, and to dismantle and junk the same, causes an apparent conflict of jurisdiction between the Railroad Commissioners of Florida, and this Honorable Court, and that under the laws of Florida, the citizens of the State of Florida, and the patrons of the

defendant Railroad Company, have an interest in this suit, and in that part of the decree authorizing the dismantling and junking of the property foreclosed by this suit.

243 Fourth. That the citizens of the State of Florida, who are patrons of the said road, have requested the Railroad Commissioners of Florida, to protect their interest, as they are authorized to do under the statutes. Whereupon it has become the duty of the Railroad Commission of Florida, to file its petition for intervention.

Wherefore, these interveners say they have an interest in this suit and pray an order of the Court in the premises for authority to intervene in said cause *amicus curiae*.

DOZIER A. DE VANE,
S. J. HILBURN,
E. E. HASKELL.

Solicitors for Interveners.

244 On February 14th, 1919, the Court entered the following order:

In the Circuit Court of Marion County, Florida. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, et al., Defendants.

This cause coming on to be heard upon application of Seaboard Air Line Railway, a corporation, and Walker D. Hines, Director General of Railroads, Seaboard Air Line Railroad, by L. N. Green, their solicitor, for leave to file a petition in the above cause to obtain payment of the amount or amounts therein mentioned, and totaling about \$640.11, as shown by exhibit "C" attached to the petition.

And the complainant in the above cause being represented by E. H. Martin, Esq., of the law firm of Hocker & Martin, representing said complainant in the foreclosure proceedings above; and E. E. Haskell solicitor for H. S. Cummings, receiver, and J. V. Walton, solicitor for Ocklawaha Valley Railroad Company, appearing to have been notified of this hearing, as shown by the notice and acceptance of service this day filed; it is hereby,

Ordered as follows, viz:

(a) That the said petitioners be permitted to file said petition without prejudice to the rights of any party in interest to take such action relative thereto and the relief therein prayed as he may be advised and as may be proper under the circumstances within thirty days from this date, and upon proper notice to the solicitor representing said petitioners;

(b) That within five days from this date the petitioners
245 by their solicitor, shall give the above named parties in
interest, or their solicitors of record, due and proper notice
of this order by service thereof or by copy duly mailed.

Done at Chambers in Ocala, Florida, this the 14th day of Feb-
ruary, A. D. 1919.

W. S. BULLOCK,

Circuit Judge.

Service of the above accepted and receipt of a true copy hereby
acknowledged; this February 14th, 1919.

HOCK & MARTIN,

Solicitors for William S. Hood, as Trustee.

On the 14th day of February, 1919, the following paper was
filed by a solicitor for Seaboard Air Line Ry.:

In the Circuit Court, Marion County, Florida. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY et al., Defendants.

To all parties in interest in the above cause, and their respective
solicitors:

You and each of you are hereby notified that Seaboard Air Line
Railway Company, a corporation, and Walker D. Hines, Director
General of Railroads,—Seaboard Air Line Railroad, by the under-
signed as their solicitor, will, on Monday, February 10th, 1919, at
ten o'clock in the forenoon, or as soon thereafter on said day or
each day thereafter as counsel can be heard, ask leave of the Hon.

246 W. S. Bullock at his office in Ocala, to file a petition in the
above cause for the purpose of securing to said petitioners
out of the funds in the hands of the receiver therein, or from
funds derived from the sale of the properties covered by said fore-
closure proceedings, or otherwise, the payment of certain amounts
totally approximating \$640.00; or such other and further relief
in the premises as may be just and proper.

At which time the court will also be asked to grant leave to said
parties in interest to take such action as them may be advised,
within such time as the court may fix, relative to the matters of
said petition.

I. N. GREEN,

Solicitor for Petitioners.

Service of the above notice hereby accepted and receipt of a true
copy hereby acknowledged. This February 3d, 1919.

HOCKER & MARTIN,

Sol. for Complainant.

E. E. HASKELL,

Solicitor for H. S. Cummings, Receiver,

Solicitor for Ocklawaha Valley Railroad Company.

J. V. WALTON.

On February 14th, 1919, solicitors for Seaboard Air Line Railway, filed the following petition:

In Circuit Court of Marion County Florida, State of Florida. In Chancery.

To Hon. W. S. Bullock, Judge of the above Court:

Your petitioners, Seaboard Air Line Railroad Company, a corporation, and sometimes known as Seaboard Air Line Railroad; and Walker D. Hines, Director General of Railroads, Seaboard Air Line Railroad, by L. N. Green, their solicitor, show unto this honorable court as follows, viz:

247 1st. That prior to the year 1909 a certain corporation known as Seaboard Air Line Railway, organized and existing under the laws of one or more states and doing business in the state of Florida as a common carrier of freight and passengers as an inter-state carrier, acquired full and complete right, title, interest, ownership and actual possession of a certain line of railroad extending from a certain place in Marion County, Florida, known as Silver Springs, to and into the city of Ocala, in said county, a distance of approximately five and seven-tenths (5.7) miles; the possession and operation of which continued in said Seaboard Air Line Railway and its successor in name and title, Seaboard Air Line Railway Company, until or about the — day of December, A. D. 1917, at which time the Government of the United States, by virtue of the laws thereof and as a war measure, took over the possession and control of the properties of the above mentioned railroad or railroads, which are now under the control of your petitioner, Walker D. Hines, Director General of Railroads, as provided in and by said Federal Laws:

2nd. That on the 14th day of December, 1909, a certain railroad company known as Ocala Northern Railroad Company, owned and operated a short line of railroad running in a northerly direction from a point in Marion County, Florida, known as Silver Springs, hereinbefore mentioned, to a place known as Ft. McCoy, in said County, as well as other places in said county; which line of railroad was subsequently extended northward to the city of Palatka, in Putnam County, Florida.

That with its southern terminus at Silver Springs, aforesaid, said Ocala Northern Railroad Company deemed it to be to its best interest to make the city of Ocala its said southern terminus, 248 therefore, on the above mentioned date, or thereabouts, it entered into a certain written contract and agreement with Seaboard Air Line Railway, a true copy of which contract is hereto attached, made a part of this petition as though here inserted in full, marked exhibit "A" and reference thereto prayed as often as may be necessary or proper.

That under and by virtue of certain court proceedings all rights of the above mentioned Ocala Northern Railroad Company there-

after became vested in a certain railroad corporation commonly known as Ocklawaha Valley Railroad Company; with which company the aforesaid Seaboard Air Line Railway entered into a certain written agreement, bearing date August 19th, 1915; a true copy of which is made part of this petition as though here inserted in full, marked exhibit "B" and reference thereto prayed as often as may be deemed necessary or proper; both of which writings were duly filed for record in the office of the Clerk of the Circuit Court for Marion County, State of Florida, on the 3d day of January, A. D. 1916, and on the 3d day of the succeeding month of February, recorded therein in miscellaneous record book lettered "J" at pages 1 to 11;

3d. That the aforesaid Ocklawaha Valley Railroad Company is the same corporation which executed the certain indenture of mortgage to William S. Hood, as Trustee, which is now being foreclosed in this court by said trustee; said foreclosure proceedings having been instituted on December 10th, 1917, by a bill in chancery filed on that date; and under and by virtue of which foreclosure proceedings a certain final decree has been entered in said cause, under which the various properties, rights and interests,—(including those acquired and held by reason of the execution of exhibits "A" and "B" hereinbefore mentioned) are to be sold by the special master therein appointed, said sale to take place on February 3d, 1919, as advertised;

4th. That since the 15th day of December, 1917, or thereabouts, the aforesaid railroad, owned and operated prior thereto by said Ocklawaha Valley Railroad Company from Silver Springs northward, and the line of road and rights leased or acquired under and by virtue of the two instruments hereinbefore mentioned and marked exhibits "A" and "B"; respectively, have, under and by virtue of one or more applications to this court by the complainant in said foreclosure proceedings or other parties in interest therein, been in the hands of one or more receivers of this court; which receiver or receivers has or have had full and complete possession of said properties and operating same under the order and decree of this court.

5th. That in order for either of the aforesaid railroad companies hereinbefore mentioned as contracting with Seaboard Air Line Railway, to have a terminus in the city of Ocala, as provided in and by their respective charters, it was necessary for them either to construct, at great cost and expense, their own line of road from Silver Springs to and into the city of Ocala aforesaid, in event they could or would have been permitted so to do, or enter into the agreement hereinbefore referred to and marked exhibits "A" and "B" respectively.

That the aforesaid railroads and the receivers of this court have had all the rights and interests, privileges and uses, provided in and by the aforesaid two written contracts; and the exercise thereof has been necessary in order to carry on and forward the operation of said railroads so contracting with said Seaboard Air Line Rail-

way and to conduct and live up to their public duties as common carriers of freight and passengers under the laws of the State of Florida, and likewise the operation of said railroad by the receiver or receivers of this court.

6th. That the complainant in the present foreclosure proceedings hereinbefore mentioned as brought by William S. Hood, as trustee, and it is also believed to be true by your petitioners and it is so charged and alleged by them from the time of the construction of the line of railroad hereinbefore mentioned from Silver Springs northward, up to the time of the filing of the bill of complaint in these foreclosure proceedings, the operation expenses of said railroad have been in excess of the income and your petitioners charge that such was or should have been known to all parties in interest under said mortgage now being foreclosed as hereinbefore mentioned.

7th. That the money and funds required by the Ocklawaha Valley Railroad Company for the purchase of the railroad properties mentioned and set forth in the bill of complaint in these foreclosure proceedings, or covered by the mortgage therein mentioned, were supplied and furnished under and by virtue of said mortgage; and the parties holding said mortgage bonds and other evidences of indebtedness secured as to payment by said mortgage are the same parties who own either directly or indirectly, the capital stock of said mortgagor, Ocklawaha Valley Railroad Company; or the owners and holders of the capital stock of said Ocklawaha Valley Railroad Company are wholly or to a large extent owners or holders or interested in the capital stock of Assets Realization Company, mentioned in the complainant's bill of complaint for the foreclosure of the mortgage wherein William S. Hood is named as Trustee, as hereinbefore stated; wherefore, your petitioners should have the relief hereinafter prayed, irrespective of the alleged claim or claims of said William S. Hood as trustee aforesaid, or of the Assets Realization Company, or of the receiver or receivers of this court:

8th. That, as shown by the itemized statements hereto attached, marked exhibit "C," and made part hereof, reference thereto being made as often as may be necessary or proper, your petitioners show and allege there is now due them the various amounts appearing on said statement; all of which are and have been long since, past due and payable, and no part thereof has been paid; and your petitioners allege that each of said items of indebtedness appearing on said statement was incurred either by the said Ocklawaha Valley Railroad Company or by the receiver of this court for the purpose of operating said railroad and keeping same as a "going concern" in the continuation of its business as a common carrier of freight and passengers between the cities of Ocala and Palatka;

9th. And your petitioners beg leave to and do hereby propound the following interrogatories to William S. Hood, as trustee as aforesaid; to Ocklawaha Valley Railroad Company, and to H. S. Cummings, as receiver herein, viz:

(a) Please state to the best of your knowledge information and belief what per cent, if any, of the stock of the Ocklawaha Valley Railroad Company is now or was at the time of the execution of the mortgage here being foreclosed, or since, owned, possessed or in any manner controlled, by the holder or holders of said mortgage or of any of the bonds secured thereby; or by Assets Realization Company or any of the stockholders therein; or by you:

(b) Please give, to the best of your knowledge, information and belief, the names of all holders of capital stock of said Ocklawaha Valley Railroad Company; and also the names of all persons who, since the execution of the aforesaid mortgage, have held or owned any bond or other instrument of writing the payment of which is secured by the mortgage sought to be foreclosed in the proceedings in this court brought by William S. Hood, as receiver, hereinbefore mentioned;

And your petitioners respectively pray as following, jointly and severally, viz:

(c) That the total amount due them respectively by said Ocklawaha Valley Railroad Company, and also the receiver thereof under the order or orders of this court, be paid your petitioners as may be just and proper under the circumstances involved;

252 (d) That in event the funds in the hands of the aforesaid receiver of this court be insufficient to pay the aforesaid sum or sums of money due your petitioners, or either of them then and in that event it is asked that payment be made out of whatever amount is brought at the sale of the various properties had under the foreclosure proceedings hereinbefore mentioned as brought by William S. Hood, as Trustee, aforesaid, in preference to the payment of any amount or amounts, bond or bonds, secured by said mortgage being foreclosed as aforesaid;

(e) That Assets Realization Company, mentioned in complainant's bill of complaint in the foreclosure proceedings hereinbefore mentioned, be made a party to this proceeding brought by your petitioners;

(f) That your petitioners may be allowed to intervene in the foreclosure proceedings hereinbefore mentioned as brought by William S. Hood, as Trustee, for the purpose of securing to them the protection of their rights as creditors hereinbefore shown, and the payment of whatever amount or amounts may be justly due them, or either of them, as hereinbefore set forth;

(g) That your petitioner may have such other or further relief in the premises as may be just and proper herein;

And your petitioners will ever pray, etc.

L. N. GREEN,
Solicitor for Petitioner.

(EXHIBIT B.)

C. C. 41205. This agreement made this 19th day of August, 1915, between Seaboard Air Line Railway, a consolidated corporation of the States of Virginia, Florida and other states hereinafter designated "Seaboard Company," party of the first part, and Ocklawaha Valley Railroad Company, a corporation of the State of Florida, hereinafter designated "Valley Company," party of the second part:

Witnesseth, That whereas the Seaboard Company and the Ocala Northern Railroad Company have heretofore made and entered into an agreement in writing, bearing date on the fourteenth day of December, 1909, whereby the Seaboard Company demised and leased to the Ocala Northern Railroad Company what is known as the Silver Springs branch of the said Seaboard Company, and further granted to said Ocala Northern Railroad Company the right to use jointly with it certain tracks and other facilities and property of the Seaboard Company, all upon the terms and conditions set forth in said agreement, a copy of which agreement is hereto attached and hereby made a part hereof, and

Whereas, the rights and properties of the said Ocala Northern Railroad Company have since been sold under foreclosure proceedings, and by order duly entered of the court having jurisdiction of such proceedings, were, by deed of L. R. Milton, Special Master, dated the 30th day of April, 1915, recorded in Marion County, Florida, in deed book 161 at page 357 of sep., conveyed to the Valley Company; and

Whereas, the Valley Company is now the owner of the rights and properties of the said Ocala Northern Railroad Company including all the latter's rights and privileges under and by virtue of said agreement; and

Whereas, the parties hereto now desire to enter into an agreement in writing under which the Seaboard Company will consent to such transfer and assignment to the Valley Company of the rights and privileges and obligations and responsibilities of said Ocala Northern Railroad Company, under said agreement, and in which the parties hereto will formally adopt and confirm, as between themselves, the provisions of said agreement;

Now, therefore, in consideration of the premises, of the sum of One Dollar (\$1.00) by each party hereto to the other paid, the receipt of which is hereby acknowledged, and of the covenants of each party hereto with the other hereinafter contained, the parties hereto agree as follows, to-wit:

1. That the Seaboard Company hereby consents to the aforesaid transfer and assignment of the Valley Company of said above mentioned agreement between the Seaboard Company and said Ocala Northern Railroad Company, bearing date on the 14th day of December, 1909.

2. That from and after the date of such transfer and assignment the Valley Company, instead and in lieu of said Ocala Northern

Railroad Company, is entitled to, and shall exercise and enjoy, all and singular the rights and privileges granted said Ocala Northern Railroad Company under and by virtue of said agreement and from and after said date, the Valley Company, instead and in lieu of said Ocala Northern Railroad Company, shall and will duly and punctually do and perform all and singular the covenants, undertaking and stipulations in and under said agreement to be made, done and performed by said Ocala Northern Railroad Company, according to the true intent and meaning thereof. And to such ends the parties hereto adopt and confirm, as between themselves, all and singular the provisions of said agreement.

In witness whereof, the parties hereto have caused these presents to be duly signed and sealed the day and year first above written.

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SEABOARD AIR LINE
RAILWAY.

By W. T. HARAHAN,
President.

Attest:

ROBERT L. NUTT,
Assistant Secretary.

(Seal of S. A. L. Ry. Co.)

Witnesses:

W. A. BRAMBERY,
CHAS. PICKETT.

OCKLAWAHA VALLEY
RAILROAD COMPANY.
By CHARLES A. MARSHALL,
President.

Attest:

G. M. P. MURPHY,
Secretary.

(Seal of O. V. R. R. Co.)

Witnesses:

JOHN ALEN,
ROBT. T. CROUCH.

STATE OF VIRGINIA,
City of Norfolk, ss:

Personally appeared before me this 18th day of October, 1915 W. J. Harahan, to me well known to be the President, and Robt. L. Nutt, to me well known to be the Assistant Secretary, respectively of the Seaboard Air Line Railway, a corporation, who severally acknowledged that they executed the foregoing instrument, as such president and assistant secretary, respectively, for and on behalf of the said Seaboard Air Line Railway, and as its act and deed for the uses and purposes therein expressed; that they did so under and

by virtue of authority conferred upon them by the Board of Directors of the said Seaboard Air Line Railway, and that the seal annexed thereto is the genuine seal of the said Seaboard Air Line Railway, and was affixed thereto by the assistant secretary, he being the proper custodian thereof.

256 Witness my hand and official seal, the date aforesaid.

S. B. PARKINSON,

*Commissioner of Deeds for the State of
Florida in the State of Virginia.*

[SEAL.]

May 28, 1915.

STATE OF NEW YORK,

County of New York, ss:

Personally appeared before me this 19th day of August, 1915, Charles A. Marshall to me well known to be the President and G. M. P. Murphy, to me well known to be the secretary respectively of the Oklawaha Valley Railroad Company, a corporation, who severally acknowledged that they executed the foregoing instrument as such president and secretary, respectively, for and on behalf of the said Oklawaha Valley Railroad Company, and as its act and deed, for the uses and purposes therein expressed, that they did so under and by virtue of authority conferred upon them by the Board of Directors of the said Oklawaha Valley Railroad Company, and that the seal annexed thereto is the genuine seal of the said Oklawaha Valley Railroad Company and was affixed thereto by the secretary, he being the proper custodian thereof.

Witness my hand and official seal the date aforesaid.

JOHN AUEN,

[SEAL.]

Notary Public in and for —

EXHIBIT "A."

This Agreement Made and entered into this Fourteenth day of December, 1909, between Seaboard Air Line Railway, a consolidated corporation existing under the laws of the States of Virginia, Florida,

257 and other states, hereinafter designated "Seaboard Company," party of the first part, and Ocala Northern Railroad Company, a corporation organized and existing under and by virtue of the laws of the State of Florida, hereinafter designated "Ocala Northern," party of the second part,

Witnesseth

Whereas, the Ocala Northern is desirous of leasing from the Seaboard Company that portion of the railroad of said Seaboard Air Line Railway, which extends from Silver Springs Junction, Florida, to Silver Springs, Florida, a distance of one and nine-tenths (1.9) miles, more or less, and also of using jointly with the Seaboard

Company that portion of railroad of said Seaboard Air Line Railway which extends from Silver Springs Junction, Florida, to Ocala, Florida, together with terminal facilities of said Seaboard Air Line Railway at Ocala, a distance of three and eight-tenths (3.8) miles, more or less; and

Whereas the Seaboard Company is willing to make such lease and extend such privileges on the terms and conditions hereinafter mentioned and contained:

1. Now, Therefore, the Seaboard Company, in consideration of the payments, covenants and agreements hereinafter mentioned and contained, to be made, kept, done and performed by said Ocala Northern and in further consideration of the sum of One Dollar (\$1.00) by each party to the other of the parties paid, the receipt whereof is hereby acknowledged, has granted, demise and lease and by these presents does grant, demise and lease unto said Ocala Northern all the following described premises and property of said Seaboard Air Line Railway, that is to say:

2. Its said railroad now constructed extending from Silver Springs Junction, Florida, to Silver Springs, Florida, in all about one and nine-tenths (1.9) miles in length; and also including the right-of-way therefor, side tracks, road bed, superstructure, and all land and depot grounds, station houses and depots appertaining to said road and to the use thereof, now owned by said Seaboard Air Line Railway, and together with the rents, revenues and income to be had, levied or derived therefrom.

3. To Have and to Hold the above described railroad premises and property, with the appurtenances appertaining thereto and the complete and exclusive possession thereof; unto the said Ocala Northern from the day and date of the execution of this instrument for the period of ten (10) years then next ensuing, with the privilege of renewal for the further period of five (5) years, unless sooner terminated in the manner herein provided, or by mutual consent.

4. In Addition to and Concurrently With the above exclusive possession and founded upon the same consideration the Seaboard Company hereby grants unto the Ocala Northern the privilege of using jointly with the said Seaboard Company all that portion of the railroad of the said Seaboard Air Line Railway, extending from Silver Springs Junction to Ocala, about three and eight-tenths (3.8) miles, together with the terminal facilities at Ocala, including freight and passenger depots, existing industry and team tracks, but not the connection tracks between the Seaboard Air Line Railway and the Atlantic Coast Line Railroad, which connection tracks the Seaboard Air Line Railway retains for its own exclusive use and possession; the Seaboard Company agreeing to furnish all necessary agency or station forces to handle the business, both freight and passenger, of the Ocala Northern; each party hereto to furnish its or their own stationery, tickets, way bills and other such supplies

5. Until otherwise agreed, each party shall furnish its own engines and crews and do its own terminal switching at Ocala; but in the event the Seaboard Company shall consider it necessary to and does provide and maintain at Ocala an engine for the purpose of doing its switching at Ocala, the Seaboard Company may, at its option, do the necessary switching at Ocala for the Ocala Northern also, charging the Ocala Northern its pro rata share of the cost thereof, based on the number of cars handled for each of the parties hereto.

6. It is understood and agreed by and between the parties hereto, with reference to the operation of the line between Silver Springs Junction and Silver Springs, as follows:

7. Said Ocala Northern shall take immediate and exclusive possession of said demised road and property, and at its own expense place thereon such an amount of rolling stock, engine-men, train-crews and other employees as may be reasonably required for the transaction of the business of said railroad, and at all times keep the same equipped in such manner as the public convenience may require, and shall maintain said demised road, the right of way therefor, side tracks, road-bed, superstructure and all lands and depot grounds, station houses and depots appertaining to the same and any and all other property hereby demised, in good condition, and operate the same in such manner as shall reasonably accommodate the traffic and travel offered from time to time for transportation. In case the Ocala Northern does not so maintain said property in such condition as, in the opinion of the Seaboard Company, may be proper, the Seaboard Company may give to the Ocala Northern Ninety (90) days' notice to make such repairs as in its opinion may be necessary; and in the event such repairs are not made before the expiration of such ninety days, the Seaboard Company shall have the right to cause the same to be made and the Ocala Northern shall and will, upon presentation of bills therefor, immediately repay the Seaboard Company the amount expended in so repairing said property.

260 8. The Ocala Northern further covenants to pay all taxes and assessments, including its proper proportion for the year 1920, that may at any time during this agreement or any extension of it, hereafter be imposed or become payable upon the said road from Silver Springs Junction to Silver Springs or upon the Seaboard Air Line Railway as owner thereof, under authority of the United States, State, County or city laws or upon the whole or any part of said road, its buildings or appurtenances or any taxable property hereby demised.

9. And that it will at all times keep all insurable property, now or hereafter erected or maintained during the term of this lease, insured against loss by fire in such company or companies as the said Seaboard Company shall or may approve, for such reasonable sum or sums as such company or companies may insure for, in the name of the Seaboard Air Line Railway, and will deliver such insurance policies to the Seaboard Company; provided, however, that such

property as the Ocala Northern may erect and maintain under the provisions of section 11 hereof, shall be insured by said Ocala Northern in the name of the Ocala Northern and at its sole cost; the policies of insurance thereon to be assigned to the Seaboard Company in the event of the purchase of any of said property by it under said Section 11 hereof, so far as said policies shall cover the property so purchased.

10th. And that it will at all times save the said Seaboard Company harmless from all damages, liabilities, or other loss and expense that may be incurred or occasioned in the maintenance and operation of said devised road.

11. The Ocala Northern shall have the right to construct such side or spur tracks, stations and other appurtenances on or connected with the property hereby devised as it may deem proper, provided such will not impair the free and continued use of the property hereby devised in its present condition; and upon the termination of

261 this agreement or any renewal hereof, the Seaboard Company shall have the right and option to purchase at the time of the surrender of the property hereby devised, such spur or side tracks, stations or other appurtenances, or any of them, so constructed, at their then value; such value, in case the parties hereto cannot agree upon same, to be fixed by arbitration, as herein set forth.

12. It is understood and agreed by and between the parties hereto with reference to the joint operation of the line between Ocala and Silver Springs Junction, as follows:

13. By such joint use of said tracks of the Seaboard Air Line Railway and other property of any nature of the Seaboard Air Line Railway, the Ocala Northern is to acquire no title or ownership therein, but the title and ownership of all and every part thereof shall at all times vest and remain in the Seaboard Air Line Railway.

14. Such joint tracks shall in all respects be maintained by the Seaboard Company without expense to the Ocala Northern.

15. The Ocala Northern will at all times save said Seaboard Company harmless from all damages and penalties that may be incurred or occasioned by reason of the Ocala Northern operating on the joint track and equipment fitted with defective appliances or lacking necessary or proper appliances.

16. That, for the purposes of this agreement, any and all employees of the Seaboard Company engaged in or about the maintenance or operation of the tracks or any other property of Seaboard Air Line Railway jointly used hereunder, or in any other service, the benefit of which may inure to the parties hereto jointly, are to be considered joint employees.

17. That for the purposes of this agreement, the responsibility of the parties hereto, as between themselves, for the defense or
262 payment of all claims, demands, suits, judgments and sums of money, to any person accruing for loss or injury, either to

person or estate, arising out of the joint use of said tracks, shall be distributed as follows:

(a) When the proximate cause of any such damage shall be negligence or anyone at the time employed in the sole service and for the sole benefit of any party hereto, then such employer shall be responsible and shall bear all loss incident to any injury to its own employees, its own property or to the employees or property of the other parties hereto, or to other persons or property, in all respects as if such damage had occurred on a portion of its own property used solely by it.

(b) When the proximate cause of such damage shall be negligence in which the employees of both parties hereto have contributed, or of employees so to be considered joint, or when the proximate cause of any such damage cannot be ascertained, or when although such cause is or may be ascertained, it shall have been the defective condition of the tracks of the Seaboard Air Line Railway not due to the actual commission of negligent acts of the employees of the Seaboard Company, then each party hereto shall be responsible for and shall bear all loss incident to any injury to its own employees or persons in its care, or to its own property or that in its custody or possession; but all liability not provided for in this agreement shall be liquidated by the parties hereto in equal contribution, the Seaboard Company one-half and the Ocala Northern one-half.

18. The Ocala Northern is hereby restricted to the operation of not more than two (2) trains per day in each direction over the tracks so jointly to be used by the Seaboard Company and the Ocala Northern. In the event, however, the Ocala Northern shall, at any time, desire to operate additional trains and engines over said tracks between Silver Springs Junction and Ocala, the Ocala Northern shall be permitted to do so upon payment of customary charges for detouring trains and engines.

19. The Ocala Northern is to provide and maintain at its own expense, and cost, at Silver Springs, telegraph operators, competent and reliable, and shall furnish for their use equipment and connections which shall make it practicable for them at all times to be in communication with the dispatchers' office of the Seaboard Company, from which is controlled that division of said Seaboard Air Line Railway in which the above mentioned track is situated, in order that all movements over the tracks jointly used hereunder may be made under the supervision of the proper representatives of the Seaboard Company.

20. The Ocala Northern will maintain passenger service between Silver Springs and Ocala with close connection at Ocala with trains ± 43 and ± 66 of the Seaboard Air Line Railway, as now numbered, and thus give the same passenger service on the Silver Springs Branch as exists at the time of the execution of this instrument.

21. That in no event shall the Ocala Northern use such joint tracks without first ascertaining through telegraph operators from the train

despatcher of the Seaboard Company, or other proper officer, acting for the Seaboard Company, that it is safe to do so, and upon ascertaining the safety of such use making application for and receiving a train order providing for such use, and transmitting such order to the proper employees of the Ocala Northern.

22. The Ocala Northern is to provide, at its own cost and expense, all equipment, including cars, locomotives, enginemen and train crews, necessary in and about the proper handling of its business over said joint tracks, said equipment to be constructed and at all
264 times maintained in conformity with the Master Car Builders' Rules and subject to inspection and approval of inspector acting for the Seaboard Company, and said enginemen and train crews to be acceptable to the Superintendent or other proper officer acting for the Seaboard Company and to satisfactorily pass their examination.

23d. That the engines, trains, cars and employees of the Ocala Northern, while upon the main line of the Seaboard Air Line Railway to be jointly used under this contract, are to be subject to the rules and regulations and are to be governed by the instructions and directions of the superintendent, train despatcher or other proper officer acting for the Seaboard Company.

24. In the event the Ocala Northern shall desire the Seaboard Company to furnish at Ocala the necessary fuel, water, train supplies and other such necessary materials, for repairs to cars and engines, the said Seaboard Company shall do so, charging therefor, the cost of such supplies or material plus ten per centum (10%).

25. If it shall thereafter be found desirable, in the opinion of the Seaboard Company, to fix the point of interchange with the Ocala Northern at Silver Springs Junction for cars moving north, each of the parties hereto will bear one-half of the expense in providing the necessary tracks thereat.

26. That the Ocala Northern shall interchange traffic exclusively with the Seaboard Company, with the following exceptions:

(1) It may interchange with steamers at Silver Springs traffic which originates with or is delivered by such steamers without the aid of another connection.

(2) It may interchange with the Atlantic Coast Line Railroad, at Ocala, Florida, traffic destined to or from local points on said Atlantic Coast Line Railroad in Florida. When such traffic is interchanged between the Ocala Northern and the Atlantic Coast

265 Line Railroad at Ocala, Florida, in cars, the Seaboard Company is to be allowed an-addition to the rate or otherwise the sum of Two Dollars (\$2.00) per car, for switching cars from the Ocala Northern to the Atlantic Coast Line Railroad, and vice versa.

27th. That all freight traffic heretofore interchanged at Silver Springs between the Seaboard Company and the Ocala Northern

shall hereafter be interchanged at Ocala, the Ocala Northern delivering and receiving from the Seaboard Company in the Ocala yard, the Ocala Northern to receive to and from Ocala the same proportion of through rates it has heretofore received to and from Silver Springs, except that rates between station on the Ocala Northern and station on the Seaboard Air Line Railway made on a combination of locals, or on a combination of locals less a percentage shall be divided as made, or, in other words, shall be divided by allowing each interested party the factor employed by it in the making up of such combination rate.

28. That the Ocala Northern Railroad shall not receive or deliver any freight or passenger traffic at points between Ocala and Silver Springs Junction, and shall not receive or deliver at Silver Springs Junction or at Ocala any freight or passenger traffic except that which may be destined to or from points reached by or over the leased line extending from Silver Springs Junction to Silver Springs.

29. It is understood and agreed between the parties hereto generally as follows:

30. That the present division of freight rates with the Ocala Northern will be extended to traffic originating at or delivered upon the Silver Springs Branch.

31. That the joint revenue accruing between Silver Springs and Jacksonville or Fernandina on traffic interchanged with
266 steamers at Silver Springs and handled between Silver Springs and Ocala on the Ocala Northern, and between Ocala and Jacksonville or Fernandina, by the Seaboard Company, shall be divided one-third to the Ocala Northern and two-thirds to the Seaboard Company.

32. That the Ocala Northern, in consideration of the premises and as a further inducement to the Seaboard Company to enter into this agreement, covenants and agrees further that it will deliver to the Seaboard Company for transportation via its line of railroad all freight which it shall receive for transportation to points reached via the line of railroad of the Seaboard Company.

33. In the event any dispute shall arise between the parties hereto as to any of their rights, duties and obligations hereunder the same shall be submitted to and be determined by a Board of Arbitration consisting of three disinterested persons, to be chosen, one by the Seaboard Company, one by the Ocala Northern and the third by the two arbitrators theretofore chosen, whose decision or the decision of a majority of them shall be final and binding as to question so submitted, the cost of any and all arbitrations under this agreement to be divided equally between the parties, that is to say, the Seaboard Company one-half and Ocala Northern one-half.

34. This lease may be renewed as hereinbefore set forth provided that the rent to be charged under the terms of renewal shall be mutually agreed upon by the parties hereto; and in the event such

agreement cannot be made, the same shall be submitted to arbitration as herein provided, and the amount of rental so fixed shall be binding upon the parties hereto.

35. That the Ocala Northern will not sub-let or part with possession of the whole or any portion of the premises hereby demised, nor in any manner dispose of any privileges herein
267 extended to it, without having first obtained the consent in writing of the Seaboard Company so to do; and in case the Seaboard Company does not agree to the sub-letting or disposition of the whole or any portion of the premises hereby demised or privileges hereby extended, the sub-leasee or sub-lessees are to be required to vacate upon the receipt of one month's notice, given by the said Ocala Northern at the request of the Seaboard Company.

36. The observance and performance of the terms of this instrument on the part of the Seaboard Company are expressly conditioned and contingent on the full and absolute performance by the Ocala Northern, its successors and assigns, of all the agreements, stipulations, provisions and covenants herein contained and further upon the payment by said Ocala Northern, its successors and assigns, to the Seaboard Company, for each of the first two years during the continuance of this lease the sum of Fifteen Hundred (\$1,500) Dollars lawful money of the United States of America, payable at the rate of One Hundred Twenty-five (\$125.00) Dollars monthly, in advance, upon the first day of each month during said two years, and without demand; and for the remainder of the term hereof the parties hereto shall agree at the expiration of said two years, on the amount of rental to be paid during such remainder of said term, and in case the parties hereto cannot agree on the amount — such rental the same shall be determined by arbitration as set forth in section 33 hereof.

268 37. Upon the breach on the part of the Ocala Northern of any or all of the agreements, stipulations, provisos or covenants, herein contained or upon its failure to pay the rent herein reserved at the time specified it shall be lawful for the Seaboard Company, upon thirty days' notice in writing given to the said Ocala Northern by the Seaboard Company to re-enter and remove all persons, including the Ocala Northern from the demised premises and from such as are jointly used hereunder and re-possess and enjoy the same, and to collect the rent due up to the date of such removal and re-possession.

38. The Ocala Northern shall, at its own cost and expense, immediately after the execution and delivery of this agreement cause the same to be spread or recorded upon the public records of Marion County, Florida, and will supply the Seaboard Company with written evidence of such recordation.

39. It is further understood and agreed that the provisions of this agreement shall extend to and be binding upon the respective successors and assigns of the parties hereto.

40. The Ocala Northern hereby assumes all the obligations of the Seaboard Company towards J. H. Howard and all other persons growing out of or expressed in that certain contract made between the parties hereto and J. H. Howard, trading as Howard Steamboat Company, dated June 1st, 1908; and the Ocala Northern will indemnify the Seaboard Company against all damage and loss by reason of the breach of any of the terms of said contract.

In testimony whereof, the parties hereto have duly signed and sealed these presents, the day and year first hereinbefore written.

SEABOARD AIRLINE RAILWAY,

By N. S. MELDRUM,

President.

Attest:

D. C. PORTEOUS,

Secretary.

Witnesses:

ALPHONSO GRIEN,

HARRY SCHAFER,

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OCALA NORTHERN RAILROAD
COMPANY,

By E. P. RENTZ,

President.

Attest:

J. V. TARVER,

Secretary.

Witnesses:

H. M. HAMPTON,

C. C. McCLURE.

STATE OF NEW YORK,

County of New York, ss:

I, Edwin L. Dunbar, a Notary Public in and for the State and — aforesaid, to hereby certify that N. S. Meldrum and D. C. Porteous, known to me to be the persons described in and who executed the foregoing instrument as the President and Secretary, respectively, of the Seaboard Air Line Railway, this day personally appeared before me and severally acknowledged that they executed the same for and on behalf of the said Seaboard Air Line Railway, and as its President and Secretary, respectively.

In witness whereof, I have hereunto set my hand and affixed my official seal, this 7th day of January, 1910, A. D.

EDWIN L. DUNBAR,

Notary Public.

My commission expires March 30, 1910.

STATE OF FLORIDA,
County of Marion:

I, H. M. Hampton, a Notary Public in and for the state and county aforesaid, do hereby certify that E. P. Rentz and J. V. Tarver, known to me to be the persons described in and who executed the foregoing instrument as the President and Secretary respectively of the Ocala Northern Railroad, this day personally appeared before me and severally acknowledged that they executed the same for and on behalf of the said Ocala Northern Railroad, and as its President and Secretary respectively.

270 In witness whereof, I have hereunto set my hand and affixed my official seal, this 14th day of December, A. D. 1909.

H. M. HAMPTON,
Notary Public.

My commission expires Aug. 31, 1911.

EXHIBIT "C."

Oeklawaha Valley Railroad Company and H. S. Cummings, as Receiver of said Oeklawaha Valley Railroad Company, to Seaboard Air Line Railway Company, a Corporation, and to Walker D. Hines, Director General of Railroad,—Seaboard Air Line Railroad, Dr.

S. A. L. Ry. Co.'s Bill.

#33084.	Oct., 1917.	Rental for S. A. L. Ry. Co.'s Silver Springs, Fla., branch for month of October, 1917, under contract of lease dated Aug. 19, 1915.	\$125.00
#34967.	Nov., 1917.	Rental as above for month of November, 1917	125.00
#35097.	Nov., 1917.	Water furnished Oeklawaha Valley R. R. company for month of November, 1917, under above contract of lease	9.90
#36674.	Dec., 1917.	Rental as above for month of December, 1917	125.00
#37063.	Jan., 1918.	Rental as above for period of Jan. 1 to Jan. 26, 1918.	100.81
	Nov., 1917.	Per diem charges due for month of November, 1917.	38.40
			<hr/> 524.11

Director General's Bill.

#30033.	April, 1918.	For freight traffic..	94.88
Bill #60031.	Aug., 1918.	For water furnished	
	at Ocala		10.89
Bill #63354.	Dec., 1918.	For water furnished	
	at Ocala		10.23
			<hr/> 116.00
			524.11
			<hr/> 640.11

271 On March 3d, 1919, the complainant filed the following motion to strike:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

W. S. HOOD, Trustee, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY et al., Defendants.

Comes now the complainant in this cause and moves the court to strike petition of the Seaboard Air Line Railway Company, a corporation, and Walker D. Hines, Director General of Railroad, Seaboard Air Line Railroad, heretofore filed because:

1st. The filing of such petition is not authorized by the rules of this court.

2nd. The petition was not filed within the time authorized by law.

3d. The petition seeks to raise issues of fact and of law between the petitioners and the complainant in this cause, which could be adjudicated only in an independent proceeding brought for the purpose.

4th. The petitioners do not show that they have any lien of any nature whatsoever upon the property of the Ocklawaha Valley Railroad Company nor any claim to the proceeds of the sale of said property.

272 5th. The petition seeks to make new and additional parties to this suit.

6th. The petition shows on its face that the petitioners have been guilty of laches in not commencing proceedings in a court of competent jurisdiction to reduce their claim to judgment.

7th. It appears that the petitioners have a complete and adequate remedy at law.

HOCKER & MARTIN,
Solicitors for Complainant.

On March 10th, 1919, the court entered the following order of reference:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

W. S. HOOD, Trustee, Complainant.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, Defendant.

This cause coming on to be heard upon application of solicitors for the complainant for the appointment of Special Master to audit the Receivers' reports and take proof as to compensation, if any, to be allowed receivers, etc., and for other purposes, and the court being advised in the premises, it is

Ordered, adjudged and decreed as follows:

That Richard McConathy, a practicing attorney of this court, be and he is hereby appointed Special Master in Chancery in this cause with full power to subpoena witnesses, etc., take proofs, and make report on the law and the facts to this court on the following points:

273 1st. The correctness of the accounts showing receipts and disbursements by the receivers herein appointed, namely, S. P. Hollinrake and H. S. Cummings and the compensation, if any, to be allowed such receivers.

2nd. To report his findings on the practicability of the further operation of the road as a common carrier, and for that purpose to take such testimony as may be offered with respect to the detailed operation of the road during the last twelve months and the present physical condition of the road and the source and character of the present traffic of the road.

3d. The Receiver, H. S. Cummings, shall appear at all hearings which will be fixed by said Master and the said Receiver and any of his employees shall submit to examination by the solicitors for the complainant without being considered witnesses for the complainant.

4th. It is further ordered, adjudged and decreed that the complainant may be required to deposit with the Master an estimated amount sufficient to cover cost of copying all testimony under this reference, given at his instance upon interrogatories by his attorneys, including cross examination of adverse witnesses and that any person adversely interested to any contention of the complainant will be required to do the same with respect to any testimony which may be

offered in opposition to the contentions of the complainant, and that the said Special Master shall notify the said Cummings and the Florida Railroad Commission of the date of his first hearing hereunder and adjourn such hearing from day to day thereafter, as may be agreeable to him, and make his report on the law and facts to this court upon the points above mentioned, on or before the 31st day of March, 1919.

274 Done and ordered at Chambers, at Ocala, Florida, this the 10th day of March, 1919.

W. S. BULLOCK,
Judge.

On March 15th, 1919, the Receiver filed the following answer to petition of intervention of Seaboard Ry Co.:

In the Circuit Court in and for Marion County, State of Florida.
In Chancery.

WM. S. HOOD, as Trustee, etc., Complainant.

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, Defendant.

Foreclosure of Mortgage, Receivership & Intervention, etc.

Answer of H. S. Cummings, as Receiver of the Ocklawaha Valley Railroad Company, to the Petition of Intervention of the Seaboard Railway Company.

H. S. Cummings as receiver of said Ocklawaha Valley Railroad Company, makes answer to the petition of intervention of the Seaboard Railway Company as follows:

This receiver has operated said railroad company as a common carrier continuously since January 26th, 1918, on which date he took possession of its railroad property, consisting of certain engines, rolling stock, effects and its trackage used from Ocala in Marion County to Palatka, in Putnam County, State of Florida, and has operated the same as such receiver as shown by his reports thereof filed and of record in this cause;

275 That all of the moneys in his hands as such receiver are the earnings of said railroad since and during the period named; that no allowance has been yet made out of the same for this receiver's services as such receiver, nor for the services of his attorneys in the premises;

That this receiver is informed and believes that the Taxes upon said railroad properties has not been paid for the year 1917; being the year prior to this receiver's operating of said railroad;

That the state and county taxes on said properties for the year 1918 have not been paid;

Wherefore, he says that it would be inequitable and unjust in the present financial status of the affairs of the said Railroad Company

to divert these funds in the hands of said receiver to petitioner's demands, and therefore suggests that petitioner's claims be deferred so far as this receiver and the funds in his hands at present is concerned until such time as the receipts of said Railroad Company shall permit the payment thereof; and in this connection he says that out of the earnings of said Railroad Company operated by him, he has paid all the current amounts due to petitioner for the time he as such Receiver has used the property of petitioner;

This Receiver further answering said petition says that he has no knowledge whatever of the matters inquired of, to wit: Interrogatories of said petition, (a) and (b.)

E. E. HASKELL,

Attorney for Defendant Receiver, H. S. Cummings.

276 STATE OF FLORIDA,

County of Putnam:

H. S. Cummings being first duly sworn, says:

That he is the receiver of the defendant railroad company in the foregoing styled suit; that he has read the foregoing answer, knows its contents and that the statements herein contained are true as to those matters therein stated to be of his own knowledge; and as to the matters therein stated upon information and belief, he believes them to be true.

Sworn to and subscribed before me this March 15th, 1919.

H. S. CUMMINGS,

P. B. GOETHE,

Notary Public, State of Florida, at Large.

My commission expires Jan. 9, 1921.

[S. P. SEAL]

On March 17th, 1919, the court entered the following order:

In the Circuit Court, Fifth Judicial Circuit, of the State of Florida,
Marion County. In Chancery.

W. M. S. HOOD, Trustee, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, Defendant.

It being made to appear to the court that the Florida Railroad Commissioners have made an application to intervene in a certain reference made by this court to one Richard McConathy as a Special

277 Master and its impracticability for the court to hear the said application by reason of the fact of its now being engaged in the trial of criminal cases in Lake County, Florida;

It is therefore, considered and ordered that the said Richard McConathy, as such special master be and his powers are hereby extended and he is directed as such master to make inquiry into and recommendations as to the intervention by the Florida Railroad Commissioners.

Done at Chambers in Tavares, on this 17th day of March, A. D. 1919.

W. S. BULLOCK,
Judge.

On March 18th, 1919, the Special Master filed the following notice:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

W. S. HOOD, Trustee, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation,
Defendant.

The parties hereto will take notice that on Tuesday, March 18th, 1919, at the hour of nine-o'clock A. M., at the law office of Hocker & Martin, Ocala, Florida, I will sit for the purpose of hearing the testimony and carrying out the provisions of the order made in this cause on the 10th day of March, 1919, copy of said order being hereto attached.

This March 10th, 1919.

R. McCONATHY,
Special Master.

278 C. C. to Florida Railroad Commission, Tallahassee, Florida.

C. C. to H. S. Cummings, Receiver, Rodman, Florida.

Copy of above mailed to each of above March 10th, 1919.

R. McCONATHY,
Special Master.

On March 21st, 1919, the Master filed the following paper:

In the Circuit Court of the Fifth Judicial Circuit of the State of Florida in and for Marion County. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, Defendant.

This cause was referred to the undersigned Master in Chancery by an order of March —, 1919, to report on the correctness of the Receiver's accounts and the practicability of further operation of the road of defendant.

Subsequently, and on March 17th, 1919, the Court referred the application of the Railroad Commissioners of Florida in the name of the State of Florida, to intervene, to me, to make inquiry into and recommendations to said intervention. Accompanying this order

is a petition sworn to February 7th, 1919, by the Commissioners asking to intervene.

After notice to complainant and the Receiver and the Railroad Commissioners to appear before me on March 18th, 1919, they appeared, the Receiver in person, the complainant by Mr. William Hoeker, and the Commissioners by Mr. Dozier A. DeVane and Mr.

E. E. Haskell, and the matter of said intervention was argued, and some testimony taken as to the income and condition of the road bed, equipments, etc. It being necessary to adjourn to a future day, counsel for the commissioners suggested that a ruling by the Master on the matter of intervention was desirable before further testimony was called, for the reason that said ruling might render testimony on this point unnecessary. I considered that a wise suggestion and see no reason why I should not dispose of that matter so far as I am concerned, now.

This suit was filed December 10th, 1917, and final decree was rendered the 24th of December, 1917, and recorded on same day. It is the usual decree in such cases, except as to the second manner of offering the property.

On December 31st, 1917, the State, by its railroad Commissioners, filed in the Clerk's office a petition for intervention. It pertains to a receivership. In January, 1918, the Court in this cause appointed H. S. Cummings, a Receiver of the railroad. The sale was not made, and on 24th — September, 1918, the court ordered sale to proceed, but on Nov. 11th, 1918 rescinded that order.

Although I do not find a Master's report of sale, it seems that he did sell on —, 1919, under the second plan mentioned in the decree.

The Commissioners attack the clause in the decree of December 24th, 1917, that authorizes a sale with power in the purchaser to dismantle the road. It contends that this provision of the decree is void on the ground that the Railroad Commissioners of Florida have the exclusive jurisdiction to permit this to be done; that application must first be made to the Commissioners and an aggrieved party may appeal to the courts on the ground of unreasonableness of the Commissioners' orders.

Counsel refer to Sections 2893 and 2895 Florida Compiled Laws for authority on this point. I think these sections pertain to regulation, etc., of roads alone, not to dismantling.

Certainly they do not give the Commissioners exclusive jurisdiction. Having no power to enforce their orders the law authorizes them to appeal to the courts. Comp. Laws, Sec. 2921.

The Colorado case, *People vs. Colorado Title & Trust Co.*, is based on a statute and I do not think is authority in this state.

I find that the said provision of said decree is not void.

II.

I am clearly of the opinion that the Commissioners representing the State, have the right and it is their duty to appeal to the courts when they deem it proper in the public interest to prevent the cessation of operation of a public railroad, or its dismantling. *Pat. 13, Sec. 2893, Compiled Laws.* My report filed in the State vs.

Ocklawaha Valley Railroad Co. on December 31, 1917, expresses my views on this point.

III.

Is this application to intervene too late? A The decree was recorded on 24th of December, 1917. Owing to the earlier litigation concerning this matter, it is possible that as no steps to sell were made the Railroad Commissioners did not deem it necessary to intervene in this suit.

While bids at judicial sales are to some extent *in rem* propositions to the court, still the bidder has rights that the court will enforce. This sale has not yet been confirmed; the matter of discontinuing a public carrier of goods and passengers is serious in many instances, as I doubt whether the public should be charged with the losses, if any there be, on the part of its servants. Intervention is a matter largely of discretion by the court. 11 Fla. 192, *Whitehouse*.

Equity Practice, Vol. 1, Sections 2111, 2112. Florida vs. 281 Georgia, 16 Howard.

I find that the Railroad Commissioners of Florida should be permitted to intervene in this case to protect the public interest, if necessary.

Respectfully submitted,

R. MCCONATHY,
Special Master.

March 21st, 1919.

Received copy foregoing this 21st Mch., 1919.

HICKER & MARTIN.

On March 27th, 1919, the Court entered the following order:

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W. S. HICKER, Trustee,

VS.

OCKLAHAWA VALLEY RAILROAD CO.

This cause coming on this day to be heard upon the petition of the Railroad Commissioners of the State of Florida for authority to intervene in said cause for the purpose of aiding and assisting the Court in determining the public's rights and interests in the continued operations of the said Ocklawaha Valley Railroad as a common Carrier, and said cause having been heretofore referred to R. McConathy to determine whether or not said petition should be granted and the said R. McConathy after having given notice to the respective parties in the said cause and their solicitors of record having made his findings said findings of the said R. McConathy are hereby approved and confirmed.

It is thereupon considered, ordered, adjudged and decreed that the Railroad Commissioners of the State of Florida, in the name of the State of Florida, be and they are hereby authorized to inter-

were in said cause and to file their bill of intervention presented with their petition for this authority.

Done and ordered at Chambers in the City of Ocala, Florida, this the 27th day of March, 1919.

W. S. BULLOCK,
Judge.

A true copy of the original, filed March 27th and recorded April 1st, 1919.

P. H. NUGENT,
Clerk.
By RUTH ERVIN,
D. C.

283 On April 4th, 1919, the State filed the following paper:

In the Circuit Court of the Fifth Judicial Circuit in and for Marion County, Fla. In Chancery.

W. S. HOOD, Trustee.

VS.

OCKLAWAHA VALLEY RAILROAD CO., etc.

Now comes the railroad commissioners of the State of Florida, in the name of the State of Florida, intervenors, in the above entitled cause, by Dozier A. De Vane, Special counsel and represents unto the court that it is contended by the complainant in the above entitled cause that by the terms of the order appointing H. S. Cummings receiver in said cause his tenure as receivership was limited to one year, and that by said limitation his said term of receivership has expired.

These petitioners, not admitting said contention of the complainant to be true, but desiring to avoid any controversy upon said question, move the court for an order in the premises continuing the said H. S. Cummings as receiver in said cause upon the same conditions and upon the same terms as he was originally appointed, or upon such further conditions and further terms as may seem proper to this court in the premises, and that said order continuing the said Cummings as receiver shall authorize the said receiver to continue the operation of said Ocklawaha Valley Railroad until the final determination of the above entitled cause. And petitioners move for all other and further orders that may be necessary to secure the continued operation of said railroad as a common carrier until the final determination of this cause.

And intervenors will ever pray.

DOZIER A. DE VANE,
Solicitor for Intervenor.

284 On the 23d day of April, 1919, the Master filed the following report:

Master's Cost (Complainant).

1919.			
March 18-27.	3 days' sitting \$6.00, 11 oaths, 69c	86.66	
	12 filings, .60, Apr. 9, 1 day sitting	2.60	
	Testimony, 932 pages	81.50	
	Report, 4.95 and 1 copy 1.50	6.45	
		97.21	
	Stenographer's per diem (one-half)	10.50	
		107.71	

Paid May 12, 1919, by complainant.

R. McCONATHY,
S. M.

(Defendant's Costs.)

1919.			
April 10-11.	2 days' sitting	4.00	
	25 oaths \$1.50, 3 filings 15	1.65	
	Testimony, 932 pages	81.50	
	1 copy report	1.50	
		88.65	
	Stenographer's per diem (1/2)	10.50	
		99.15	

Paid by Fla. R. R. Commission, state warrant No. 12,490 May 17, '19.

R. McCONATHY,
Special Master.

In the Circuit Court of the Fifth Judicial Circuit in and for Marion County, State of Florida.

WM. S. HOOD, as Trustee, Complainant.

vs.

OCKLAWAHA VALLEY RAILROAD, Defendant.

285 This cause was referred to the undersigned as a special master by an order of date the 10th of March, 1919, directing me to report: first, the correctness of the accounts, showing receipts and disbursements by the receiver; second, the compensation, if any, to be allowed such receiver; third, the practicability of the further operation of the road as a common carrier; and for this purpose to take testimony that might be offered with respect to the detailed operation of the road during the last twelve months, and the present physical

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condition of the road, and the source and character of the present traffic of the road.

The Master sat to take testimony and heard arguments on March 18th, 27th, April 9th, 10th and 11th, 1919. Examination of the following witnesses had, to-wit: J. P. Moody, Eugene Stacey, J. E. Green, — Pillans, T. P. Bernard, H. S. Cummings, C. Carmichael, A. J. Baxter, Thomas Sexton, G. R. Ramsey, Wm. Hocker, E. H. Martin, J. V. Tarver, W. M. Wilson, Andrew Christansen, R. O. Gmann, Thomas A. Perry, Jno. Perry, D. M. Waldron, Major Priest, S. Smith, W. H. Cook, W. L. Cowart, A. O. Harper, L. E. Apgar, H. M. Hutchinson, F. M. Chaffee, O. H. Turner, B. Walker, M. D. L. Graham, G. C. Ziegler, J. I. Taylor, Anton Heini, E. E. Haskell, A. L. Calhoun, Ray M. Cale, W. A. Geothe, E. E. Walker and Arthur Corcoran. The Testimony of said witnesses is herewith returned.

The following exhibits were filed in evidence:

Exhibits.

EXHIBIT "O."

Statement of Assets and Liabilities and trial balance, attached to same Statement of monthly expenditures for February, March, 286 April, May, June, July, August, September, October November and December, 1918, and January, and February, 1919 and statement of roadway expenditures from January 26th, 1918 to January 31st, 1919, and

Earnings and operating expenses from January 26th, 1918, to January 31st, 1919, marked Exhibits A, B, C, D, E, and F.

Earning and operating expenses January, 1919, marked Exhibit G. Proposal of Rodman Lumber Co., dated December 21, 1917, Exhibits R, L, C.

Communication of T. P. Benard to Conductors and Agents, dated Mch. 25, 1919, Exhibits T, P, B.

Letter from Ernest Amos, Comptroller, to Hocker & Martin, dated Mch. 17, 1919, Exhibit W, H.

A letter from H. S. Cummings, Rec'r to Hocker & Martin, dated Mch. 21, 1919, Exhibit- H & M.

Correspondence between H. S. Cummings, receiver, and the American Short Line Railroad Ass'n, Exhibit S, L.

Answer of H. S. Cummings to the motion made for an order for a special master to proceed with sale, Exhibit X.

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First.

The correctness of the receivers' accounts showing receipts and disbursements: It appears that Mr. Hollinrake either resigned or otherwise dropped out of the receivership early after his appointment and that Mr. Cummings has been all the time the active and responsible

ceiver. The term of the receivership expired one year after his appointment, that is, on the — day of January, 1919, but he has continued to act without any apparent objection. He filed, as a basis from which to ascertain the state of his account, a trial balance of date March 31st, 1919, and a statement of assets and liabilities at the close of said March 31st. These two papers are exhibit "O", filed April 9th, 1919. No question has been made as to the truthfulness of these two papers (exhibit O), that is, that they correctly show the business done. Whether certain items are properly placed in them is questioned. It appears from them that the receiver has on hand, in cash, and in bank, \$4,610.29, as of March 31st, 1919, being items of "H. S. Cummings, receiver, \$500.00" and "cash in bank \$4,110.29" found on trial balance sheet. A number of accounts are due the receivership that on future settlement or reports should be accounted for. On page 178, Mr. Pillans, the auditor for the receiver, explains a number of items in exhibit O: first, that "material and supplies \$812.45" in "assets" is material on hand now, and the item in liabilities "surplus", is material and supplies on hand when the receiver took charge, so that he now has \$124.95 more than then. These items for all practical purposes virtually offset one another.

Second.

The item of "accounts payable, \$7,467.61" under "liabilities" consists of items actually due and owing on April 1st, 1919, by the receiver, such as pay rolls, war tax on freight and passenger traffic etc. (See Pillans' testimony, pp. 179-180). The auditor exhibits 288 claims that the assets consisted of that aggregate \$9,247.74 (pp. 180-182). On the above, the receiver had owing to him \$1,780.13 more than he owes, as a result of his administration. For the purpose of ascertaining the real situation of the business and whether it is paying expenses, these assets must be looked into to ascertain whether they are good and can be relied on.

The item of \$2,132.40 "Government R. R. Administration," is a claim for refund for the two free-days on cars of other short line roads. It has been spoken of in the testimony as a claim against the U. S. Government, but such is not the case. I find no evidence that the Government took over these short line roads or ever obligated itself to pay this claim, nor that the Ocklawaha Valley Railroad Co. or its receiver, ever entered into any agreement with the Federal Government for payment of such bills. As I gather from Mr. Benard's testimony (page 18), no contract has been signed by the receiver. The American Short Line Railroad Association seems to be an association engaged in the business of taking these claims for collection. It is probable that a large per cent. of these claims will be eventually paid by the lines, but when, no one can fix any definite time, so that I conclude that it is not such an asset as should be considered as of any weight in determining the probable income of the road for the near future, and I so find. Of course, they are to be considered in estimating the amount of traffic done. I

cannot just now recall that the record disclosed the period over which these claims were created; that they may extend prior to 1918. If this \$2,132.40 is discarded as an available asset, the receiver is short \$352.26 in having available means to meet the expenses of his administration, to say nothing of other lesser items that may not be collected.

The receiver expended \$6,000 on a locomotive during his term. It is alleged that as this expenditure created a locomotive worth \$15,000, the \$9,000 difference should be considered as an earning. Unless \$15,000 in money could be realized on a sale of this locomotive, if it could be spared, it is of no more value than the cheaper one towards paying debts. The "Betterments, \$7,851.69" includes this \$6,000.00 item (Exhibit O, "assets and liabilities").

Earnings and Expenses.

Exhibit O gives the freight earnings for the 14 months at	\$64,630.92
And passenger revenue.....	10,319.90
Mail earnings	2,237.90
Total.....	\$77,188.91

These are the principal sources of income from all railroads on which they rely for income.

It is shown on this exhibit O that operating expenses were	\$61,166.79
Hire of equipment.....	6,156.00
Joint traffic rents.....	2,361.11
Total.....	\$69,583.90

With taxes, the above are the principal items of outlay in running this road. This balance of \$7,604.91 is practically wiped out by the taxes of about \$6,000 per year. It appears that the taxes for 1917 and 1918 remained unpaid, amounting now to over \$23,000. In addition, a decree has been entered by this court (now on appeal in the Supreme Court for the past 18 months), on foreclosure of a prior mortgage amounting to some \$35,000 on a part of this road.

Source and Character of Present Traffic.

Mr. Pillans testifies that for the year 1918 the Rodman Lumber Co. furnished approximately \$32,568.49 of revenue and freight, out of a total of about \$49,000. (pg. 23). Mr. Cummings, who is president of the Rodman Lbr. Co., testified that this company's business with this railroad will not be increased in 1919, but reduced under present conditions (pp. 25-26). This Lumber Company is not dependent on the Ocklawaha Valley to move its product, but can ship over the Atlantic Coast Line. Quite a good deal of testimony got into the record concerning prospective busi-

ness to be furnished by Wilson Cypress Co. in the way of logging from land they have south and east of Silver Springs, which Mr. Cummings says is the biggest prospect for business that he knows of. He says they said they would furnish 12 cars a day for two years, but would not say what they would pay. To obtain this Wilson business it is necessary for the Ocklawaha Valley to be extended some distance, or the Wilsons to build it, in either case crossing the Seaboard Air Line Railroad track. The Wilson people have had this timber for years, and if they had cared to use the Ocklawaha Valley they have had ample time to arrange for it. I think from the evidence that no dependence can be put on getting an advantageous, if any, deal with the Wilson Cypress Co., and its business need not be considered.

A number of residents along the line of the road were called by the Railroad Commission to testify as to their desires concerning the discontinuance of the road, and the business they would give the road. Mr. Ginann says he has timber cut down to run him 6 months, but don't know what he would do after that. His lease has expired. He appears to have quit before it was necessary, as the road is still there (pg. 72). T. J. Perry says that the Meadow Land & Improvement Co. might sometime furnish three cars of humus per day, and has some timber near there (pg. 75). John Perry buys on stumpage basis; afraid to venture on account of the uncertainty of the road continuing to be run. D. M. Waldron has a small amount of timber; would have to go 9 miles to Sparr to get to a railroad (pg. 80); says people who went to Burbank didn't know how to farm; never heard the people say why they left (pg. 81). Major Priest has lived at Burbank some years, raised sheep, cattle and sugar cane and farms; would ship by the Ocklawaha Valley Railroad if it had facilities for loading cattle; could furnish one car of sheep per year, shipped one car of cattle last year, got better rates over the Seaboard (pp. 82-84). Most of "Sieg" settlers have left. 12 children attend school at Burbank (p. 84); great deal of land on line of road is poor, but from Ocala to Fort McCoy is elegant land, except a few ponds (p. 85). Silvester Smith, farmer and merchant at Bay Lake, doesn't use the Ocklawaha Valley, because of poor service. W. H. Cook has store at McCoy and says he gives road \$900 or \$1,000 worth of business. Virtually admits his untruthfulness (p. 89). There were stores at Ft. McCoy and Eureka before the road was built. A few other witnesses were examined along the same lines, that have small interests near or on the road and of course, wish the road to operate. Outside of the timber business most of this country appears to have been as prosperous before as since the road was built, if not more so. It is apparent that the agricultural and stock interests can contribute but a small income to the road, and I think it also apparent that there is not a great deal of timber to be transported. I find that the source and present traffic of this road is principally hauling timber and logs, and the major part of that is derived from one concern that has another railroad outlet for its product.

Third.

Physical conditions of road. J. P. Moody, tie agent for Florida East Coast Railroad, has been on O. V. once or twice a week for one and a half years; ties in track pretty bad, rotten, and over a considerable extent from Fort McCoy to Palatka about half of the ties in this condition, won't say "thoroughly safe"; believe 1,000 to a mile new ties needed anyhow; distance from Ocala to Ft. McCoy 35 292 miles (pages 1-4). Eugene Stacey thinks half of ties unsound (p. 5) track in about same condition as it was a year and a half ago. J. E. Green, life of sap tie about one year (p. 7) knew of 11 miles of bad ties, 1,000 to the mile; walked over these 11 miles in January, 1919. Thomas Sexton examined track in past few days, in company with Mr. Ramsey, state Railroad Commission engineer; walked over 18½ miles; counted "13,000 absolutely rotten ties, in the 18½ miles; went over the remainder of road in motor car and it seems to be in same condition. Of the ties put in from Fort McCoy to Palatka most of the new ties are saplings, hewn on two sides, not more than four inches in diameter at small end, with bark on them; would last from six to nine months (p. 54). Some bridges in very good and some very bad condition. I think culvert No. 2 in mile 6 is absolutely rotten. I would be afraid to ride over it (p. 55). I think 1,000 ties per mile needed on track now and in two years probably 80 per cent needed. Office building in Ocala dilapidated and neglected. A. J. Baxter: to put road "in absolutely first-class order" might require 1,000 ties per mile. (57). G. R. Ramsey, civil engineer in employ of State Railroad Commission, accompanied Sexton on examination; found as I added up his figures, 11,340 rotten ties in 18¼ miles (p. 59):

It is evident that the condition of the road is bad and dangerous to an extent that ought not to be, which is permitted to exist only because of financial distress and light traffic. I find the physical condition of the road to be very poor.

Fourth.

Practicability of further operation. It is evident that the income of this road will almost certainly be less this and future years than last year, and there was a 25 per cent increase in freight rates last year that will probably be taken off entirely or reduced. Quite a 293 large number of new ties should be laid. Bernard testifies that they put in 16,680 last year, No. 2, 80 per cent, culls, still many thousands are needed. The 16,680 cost an average of about 45 cents (pp. 10-12). To replace the 1,000 per mile this year at above cost would require \$20,000. Culvert work must be done also. Taxes of \$13,500 for 1917 and 1918 and probably \$6,000 for 1919 are due and unpaid. Operating expenses for period January 26, 1918, to March 31st, 1919, were \$61,166.79, with practically no funds in hand, and the want of any prospect of better conditions in the

future, I do not see how it is possible to continue operating the road. This road has never paid expenses.

I find it is impracticable to further operate said Ocklawaha Valley Railroad.

While I may be going beyond the scope of the order of reference, since counsel for either side have argued the matter, I will refer briefly to the power of this court to dismantle or permit the road to be dismantled. Numerous courts have permitted this to be done.

In Elliot on the Law of Railroads, (Vol. 1, Sec. 642), in discussing the subject of mandamus to compel railroads to perform service, it is said:

"Where the company is utterly unable, by reason of insolvency or the like, to perform its duties to the public, the courts will not, as a rule, attempt to compel it to do so by mandamus, as this would be a vain and fruitless thing. Some courts, however, have issued the writ notwithstanding the return of the company that it had no funds and no means of obtaining any. There is some reason for the latter practice, especially when the company by its own fault has placed itself in such a position, for circumstances may change and, in any event, it may be well to thus compel the company to make a bona fide effort to perform its duties and comply with the order. If it is then found to be impossible, the court can see that no injustice is done to the company and will refuse to punish it for contempt."

In State vs. Old Colony Trust Co., 215 Fed., Reporter, 307, the circuit court of appeals this subject is discussed, and the first head note to the opinion reads thus:

"A railroad company may be permitted to abandon a branch line which is not self supporting, is in a dilapidated condition and for the continued operation of which there is little public necessity, where the road is insolvent with no means of obtaining the money or rehabilitating the branch, the operation of which in its present condition is dangerous, while its attempted operation jeopardizes the successful operation of the remainder of the system for which there is a public need."

This case is found also in Lawyers Reports Annotated, 1915-A, at page 549, and there is quite an extended note.

In New York Trust Co. vs. Portsmouth and Exeter St. Ry. Co., 192 Federal, P. 726, the question of dismantling the road was before the court in a suit to foreclose a mortgage. Commissioners were appointed to investigate, and they reported that the road bed, rails, rolling stock and other equipments were out of repair and to render the road safe to operate large expenditures would be at once required, and that the franchise of the road was valueless.

The court says that it had

"The power in an insolvency situation like this to dispose of the property involved in any reasonable way which may be for the best

295 interests of the mortgagee and, if necessary, as seems to be the case here, in order to realize anything from the property, to order a sale in the alternative."

The Court then refers to the case of *Jack vs. Williams*, 113 Federal and *Ralston vs. Dodge City Railroad*, 24 L. R. A. and says that they indicate that courts refuse to issue mandates to compel the operation of railroads which are totally insolvent and where there is no possibility that conditions will be improved by continuing the road as a going concern. The court further says that

"Some of the decisions base the refusal to compel owners to operate under circumstances of great pecuniary loss which may result through repairs and continuance of a going concern, upon the ground that it would deprive the owners of their property without compensation and therefore that it is justifiable to order a receiver to dismantle the road and sell the materials."

The decree of sale in this case, I think, was drawn possibly with this decision in mind.

The case of *Jack vs. Williams*, 113 Federal, affirmed in 145 Federal, discusses the entire question, and in an elaborate opinion by Judge Simonton holds that the road may be discontinued, saying the duty arising from the ownership of the franchise is merely to meet the public requirements, and where the traffic on a road is not sufficient to pay its operating expenses such duty does not require its operation and it may be abandoned.

Mr. Morawetz, in his work on corporations, says:

"The duty of a railroad company to operate its road requires it merely to meet the public wants and exigencies. If there isn't sufficient traffic over a particular line of road to pay for the expenses of running trains, this is sufficient evidence that the public did
296 not require it to be kept in operation. In such cases the company may cease operating the road, unless this be contrary to the express terms of the charter". Morawetz on Private corporations. Sec. 1119."

So, I am clearly of the opinion that the law is well settled that the owners of a railroad will not be required to operate it when it is certain that it must be done at a loss and that this rule is applicable in the interest of the mortgagees.

It has been suggested in argument that the injunction granted by Judge Wills, in the Putnam Circuit Court, prevents proceedings in this case to dismantle this road. It does not seem that the mortgagees were parties to that suit, and therefore I am unable to see that they are bound by the injunction. In addition, that injunction was obtained quite a long time ago, and nothing has been done to make it perpetual. However, as I say, I do not think that the mortgagees complainants in this suit, not being parties to the other, are bound by the injunction, even if it is now in force.

Fifth.

Compensation to the receiver. No testimony has been given on this matter. Unless serious matters of financing or traffic arrangement with other roads have to be attended to, or other matters of like importance arise that require the receiver's attention, the subordinate officials do the real work. It appears that this receiver has managed to keep this road in operation under great difficulty and under other circumstances ought to have full pay for his services, but owing to the fact that he could use this road to advantage in his own business and seems to have taken this job to some extent through a desire to test its earning capacity, that it might be kept in operation, I think a nominal sum only should be allowed. I find that \$600.00 for the time up to March 31st, 1919, be allowed H. S. Cummings as receiver.

I believe that the foregoing covers all the points that have been referred to me, and I respectfully submit this report, asking that such allowance for my services be made, over and above the taxed costs, as may appear reasonable to the court.

RICHARD McCONATHY,

Special Master.

April 18th, 1919.

On April 25th, 1919, complainant filed the following affidavit:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WILLIAM S. HOOD, Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation,
Defendant.

STATE OF FLORIDA,
County of Marion, ss:

Eldon Bisbee being duly sworn deposes and says that, as of January 1, 1914, Assets Realization Company, a New Jersey corporation, submitted the administration of its affairs to a committee of its creditors, in consideration of its said creditors, extending the times for the payment of their claims. That since said date the said Company has been liquidating its affairs under the supervision of the committee of its creditors; that deponent has ever since said date been the attorney and counsel for said committee of creditors, and as such also attorney and counsel for said Assets Realization Company in liquidation. That in his capacity as such attorney and counsel, deponent has become familiar with the assets of said company, and with its transactions prior to said January 1, 1914, and that the statements of fact hereinafter con-

tained are made as the result of personal examination by deponent of various records and instruments in the possession of the said company and from knowledge and information obtained by deponent in his capacity as such counsel.

That in or about the month of October, 1911, the Assets Realization Company purchased from one E. P. Rentz, One Hundred Seventy-five Thousand (\$175,000) — of his bonds, which were secured by a trust deed to W. W. Crawford, Trustee, covering a variety of properties of the said Rentz, and also, by One Hundred Seventy-five Thousand (\$175,000) Dollars of bonds, secured by a trust deed to said W. W. Crawford, Trustee, covering the property of the Ocala Northern Railroad Company.

That the said Assets Realization Company sold thirty thousand (\$30,000) Dollars, face amount, of the said Rentz bonds to the British & Foreign Trust, Limited, which is a corporation organized and existing under the laws of Great Britain; Fifty Thousand (\$50,000) Dollars, face amount, of the said Rentz bonds were sold to the Philadelphia Warehouse Company of Philadelphia, Pa., and Twenty Thousand (\$20,000) Dollars, face amount thereof, were sold to the Financial Corporation of America. Twenty Thousand (\$20,000) Dollars of said amount of said bonds were subsequently paid off, and the balance of the Fifty Thousand (\$50,000) Dollars, face amount thereof, sold to Philadelphia Warehouse Company, were subsequently taken over by the Assets Realization Company

299 because it had guaranteed the payment of the same at maturity, which payment was not made. Accordingly, the said Assets Realization Company is the owner of One Hundred Five (\$105,000) Thousand Dollars of said bonds and the remaining Fifty Thousand (\$50,000) Dollars thereof is owned by said British & Foreign Trust, Limited, and said Financial Corporation of America.

That, with the exception of so much thereof as supplied the funds with which to retire the said Twenty Thousand (\$20,000) Dollars of said Rentz bonds, and the said Ocala Northern Railroad Company, the property securing the said Rentz bonds has proven to be of no value.

That in or about the month of April, 1913, default having accrued in the payment of the said Rentz bonds, the said One Hundred Seventy-five Thousand (\$175,000) Dollars, face amount, of Ocala Northern Railroad Company bonds were sold to satisfy the lien of the pledge thereof, and said bonds were bid in by said Asset Realization Company.

That shortly thereafter, proceedings were taken to foreclose the trust deed securing the said Ocala Northern Railroad Company bonds, and that during the year 1915, the property of the said Ocala Northern Railroad Company was sold in said foreclosure proceedings and purchased by or in the interest of the said Assets Realization Company, which, thereafter, caused the Ocklawaha Valley Railroad Company to be incorporated and the property formerly owned by said Ocala Northern Railroad Company to be conveyed to said Ocklawaha Valley Railroad Company.

That, although the said Assets Realization Company advanced

the funds necessary to complete the said foreclosure proceedings, and since the organization of the said Ocklawaha Valley Railroad Company has advanced practically all funds necessary to sustain the operation of the said railroad, and the funds required in connection with this proceedings, such advances have been made 200 for its own account and for the account of the said owners of said Rentz bonds.

That, after the institution of this proceeding the said Assets Realization Company, which held for its own benefits and for the benefit of such other Rentz bondholders, all of the bonds issued by the said Ocklawaha Valley Railroad Company secured by the mortgage in process of foreclosure in this proceeding, on or about the 19th day of December, 1917, in anticipation of the decree then about to be entered herein, and of the sale thereunder, of the property of the said Ocklawaha Valley Railroad Company, said Assets Realization Company entered into a contract with R. C. Hoffman & Co., Inc., copy of which is hereinafter annexed.

Deponent further says that the first payments of \$25,000 therein required on the part of the said R. C. Hoffman & Co., Inc., was duly made but that, because the sale of the property covered by said mortgage was adjourned by order made herein after the execution and delivery of said contract, the said Assets Realization Company was unable to acquire the said railroad and the said property mentioned in said contract in season to make delivery thereunder to the said R. C. Hoffman & Co., Inc.

Deponent further says that because of said inability of said Assets Realization Company to make delivery under said contract, the same was cancelled and, as provided therein, the said sum of \$25,000 received thereunder by said Assets Realization Company was repaid by it to the said R. C. Hoffman & Co., Inc., with interest.

Deponent further says that he is informed and believes that the market prices of rail and other property which the said R. C. Hoffman & Co., Inc., agreed to purchase under said contract 301 have greatly decreased, and that according to the best information which this deponent is able to obtain, and as the result of considering such information, this deponent is informed and believes that the said property which the said R. C. Hoffman & Co., Inc., agreed in said contract to purchase cannot now be sold for more than \$140,000.

ELDON BISBEE.

Sworn to before me this 22nd day of April, 1919.

MABEL JOHNSON,
Notary Public. [S. P. SEAL.]

This Agreement of sale and purchase made this 19th day of December, 1917, between Assets Realization Company, a corporation under the laws of New Jersey, (hereinafter called the "Seller"), and R. C. Hoffman & Company, Inc., a corporation under the laws of Delaware (hereinafter called the "Buyer"), Witnesseth:

That for considerations hereinafter set forth the seller hereby sells and agrees to deliver, and the buyer hereby purchases and agrees to receive, the following material, and on the following terms:

Materials.

All of the rails, bolts, spikes, fishplates, switches, machines, machinery, tools, implements, ties, bridges, locomotives, tenders, cars and other rolling stock (but not including real estate, right of way, stations, buildings, power houses, water tanks, warehouses, sheds or other structures, franchises or choses in action of any kind or nature) belonging to or constituting a part of the railroad or railroad system of the Ocklawaha Valley Railroad Company, a corporation organized and existing under the laws of the State of Florida, whether affixed or not affixed to the realty, and situate or located in the counties of Putnam and Marion in said State of Florida.

Price.

The purchase price of the property sold is \$190,000 which shall be payable in instalments as follows: all deferred instalments to bear interest at the rate of six per cent per annum accounting from the date on which the seller may become entitled to make delivery of said material, notice of which date must be given to the buyer.

\$25,000 simultaneously with the execution of this agreement.

\$25,000 within 10 days from the mailing by the seller to the buyer of the notice of its right to deliver the material.

\$20,000 two months after the date of the mailing of said notice.

\$20,000 three months after the date of the mailing of said notice.

\$20,000 four months after the date of the mailing of said notice.

\$20,000 five months after the date of the mailing of said notice.

\$60,000 six months after the date of the mailing of said notice.

All payments provided to be made hereunder to the seller shall be made in New York funds at its office at No. 43 Exchange Place, Borough of Manhattan, New York City.

The initial payment of \$25,000 made simultaneously with the execution of this contract is to be returned to the buyer, together with interest thereon at the rate of six per cent per annum, in the

event that the contract is terminated or cancelled as herein-
303 after set out, and to secure the refund of the same to the

buyer, the seller has simultaneously herewith, deposited with the Finance and Trading Corporation securities to be delivered to the buyer in the event of the failure of the seller to make the payment or refund of said initial payment. The securities deposited are those now held by the Finance and Trading Corporation as securities for a balance due by the seller to it.

Delivery.

The material sold is to be delivered to the Buyer at Palatka, Florida, as expeditiously as practicable. The seller must deliver

on account of the material sold at least One Thousand (1000) tons of rails, gross, on or before July 24, 1918, and thereafter deliver at the rate of not less than one thousand tons of rails a month until the entire material shall have been delivered. With each delivery of rails there shall be made delivery of the complement of bolts, spikes and plates. The buyer agrees that as the rails are loaded for shipment by it from Palatka, except as to rails which are loaded on cars for direct shipments, it will pay for the same at the rate of Forty-five Dollars per gross ton of rails shipped, including in the freight, such accessories as shall be shipped with the rails. Payment so made for rails and such accessories as shipped shall not be in addition to, but shall be on account of the total purchase price of the material bought, and the amount of the payment shall be credited on the next instalment of the purchase price falling due.

Upon payment on account of the purchase price of the material hereby sold of said second instalment of twenty-five thousand dollars, provided the seller does not need the same for the purpose of making delivery at Palatka of the balance of the material sold, the rolling stock and the ties, or so much thereof as the seller shall not need for the above purpose, shall be immediately or thereafter delivered to the buyer at its option at a valuation which equals the amount for which the same shall be sold by the buyer provided such valuation shall not be less than that agreed upon between the parties hereto. The amount of said valuation first mentioned shall be charged against the second instalment of the purchase price made on account of the material purchased.

The seller shall have a lien and the right to possession of all of said property, to secure the payment of said purchase price. This shall not, however, affect the right of the buyer to ship material upon making the per ton payments herein provided for.

Storage.

The seller shall unload the material at the end of the seller's line at Palatka in a suitable place, convenient of access to the connecting railroads. It is understood and agreed that, at the request of the buyer and upon cars being furnished by it, for the original loading of material, the seller will load them and deliver them at Palatka for direct shipment, in lieu of delivering the material itself at Palatka for re-shipment. The contents of such cars shall be paid for as the cars are delivered at Palatka.

Cancellation.

In the event that the seller is not able to deliver the material in the amounts and at the times above set forth and its failure to so deliver is due to strikes, accidents, injunctions or other judicial inhibitions, or other causes over which the seller has no control, or should the conditions under which the seller may be able to acquire said property on or before June 24, 1918, require the operation of said railroad, then on July 24, 1918, August 24,

1918, or September 24, 1918, or October 24, 1918, as the case may be, provided the default shall have been made as aforesaid, either the buyer or the seller shall have the right to annul or terminate this contract. If the buyer shall elect to terminate the contract, it shall pay to the seller for the rails which shall have been delivered to it prior to such termination at the rate of Fifty Dollars (\$50.00) a gross ton; any balance remaining in the hands of the seller shall forthwith be returned to the buyer with interest thereon at the rate of six per cent per annum. There shall be no consequential damages payable by either party to the other in the event of such cancellation.

Wrecking.

As a further condition of this agreement, and as part of the consideration therefor, the buyer agrees to pay to the seller as additional compensation for delivering material purchased at Palatka the cost to the seller of making such delivery, plus ten per cent on the amount thereof, providing that such cost and commission shall not exceed the sum of fourteen thousand dollars, and provided further that the payment to be made for such service shall not fall below eight thousand (\$8,000) dollars, which amount the buyer agrees to pay, even though the cost, plus commission for doing such work, shall not amount to that figure. Payments for this service shall be made monthly on written detailed statements from the seller, which statements the buyer shall have the right to verify. In figuring the cost of such work, there shall not be included anything other than the cost of labor and superintendence, material, maintenance 306 and expense used and incurred exclusively on such work.

In witness whereof each of said parties has caused these presents to be executed in duplicate by one of its duly authorized officers and its corporate seal to be affixed and attested by its secretary, as of the day and date first above written.

ASSETS REALIZATION COMPANY.

(Signed) By HORACE W. DAVIS,
President.

Attest:

(Signed) W. S. HOOD,
[SEAL.] *Secretary.*

H. C. HOFFMAN & CO., INC.,

By R. C. HOFFMAN, JR.,
Vice President.

Attest:

(Signed) A. E. RUDOLPH,
[SEAL.] *Assistant Secretary.*

STATE OF NEW YORK,
County of New York, ss:

On this 19th day of December, 1917, before me personally came Horace W. Davis to me known, who being by me duly sworn, did depose and say: that he resides in New Rochelle, New York; that he is the President of Assets Realization Company, one of the corporations described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(Signed)

WINSLOW LYON,
Notary Public, Westchester Co.

Certificate filed in New York Co., #277.

307 STATE OF —,
County of —, ss:

On this the 19th day of December, 1917, before me personally came R. C. Hoffman, Jr., to me known, who being by me duly sworn, did depose and say: that he resides in Baltimore County, Md., that he is the Vice President of R. C. Hoffman & Co., Inc., one of the corporations described in and which executed the foregoing instrument; that he knows the corporate seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(Signed)

J. WALLACE BRYAN.

On May 5th, 1919, the court entered the following order:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WM. S. HOOD, Trustee, Complainant,

vs.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation,
Defendant.

This cause came on to be heard on the exceptions to the Master's report, and for confirmation of sale under foreclosure proceedings.

308 Counsel for the receiver has asked the court to make a full statement of his findings and it seems to the court that in order to have a more perfect understanding of the conditions and situation, that it is proper, if not necessary, to make a review of the history of this road leading up to the present status, all of which, however, are found in the record.

I find from the evidence in this case that this railroad has been one that has been constructed wholly from private resources; that is, there has been no public grants or donations to aid in the construction of this road. The history of this road shows that it was never a success. Prior to the present corporate existence there had been financial disasters and a foreclosure of a mortgage and a re-organization finally culminating in the present corporation.

In 1909 the Ocala Northern Railroad Company was chartered under the laws of Florida, to construct and operate a railroad from Ocala to Jacksonville, Florida. Prior to this one E. P. Rentz constructed a logging road to supply his saw-mill, at that time situated at Silver Springs, and he constructed a road approximately eleven miles between Fort McCoy and Silver Springs primarily for the purpose of logging his saw mill at Silver Springs.

In 1911 this logging road was extended from Fort McCoy in a generally northeasterly direction, to a point within one and one-half miles of Palatka, Florida, and this was primarily for the purpose of logging the timber between that point and Fort McCoy belonging to E. P. Rentz and George Rentz, his brother, who had erected a large saw-mill at Fort McCoy.

Sometime after the building of the logging road within $1\frac{1}{2}$ miles of Palatka, in about the year 1911, this Ocala Northern Railroad commenced operation as a common carrier. It is estimated 309 that this road cost between \$150,000 and \$500,000. In

order for it to operate as a common carrier and reach the city of Palatka, it had to make some track arrangement with the Atlantic Coast Line Railroad Company to enter over its tracks, a distance of approximately $1\frac{1}{2}$ miles, and at Silver Springs, it has to make some track arrangements with the Seaboard Air Line Railroad Company to operate its trains over the latter company's road to Ocala, a distance of about six miles, or more.

This road was operated under the name of the Ocala Northern from about December 1st, 1909, to the latter part of the year 1913. Rentz mortgaged the road and issued bonds to the extent of about \$175,000 and the Assets Realization Company purchased them at their full face value. These bonds were secured by a mortgage, and this mortgage was foreclosed in the United States Court in December, 1913. A receiver was then appointed and operated the road from December, 1913, until April, 1915. The Assets Realization Company purchased the road at foreclosure sale and in April, 1915, organized the present corporation.

In order to secure the purchase money at foreclosure sale, bonds were issued endorsed to the Assets Realization Company and to secure these bonds a mortgage was given, which mortgage is now the subject of foreclosure.

I find that the large saw-mill interests at Silver Springs have been burned and abandoned and at Fort McCoy have been abandoned, so there is nothing now to supply the road in the way of saw-mills except a little saw mill that cannot be taken into consideration as forming much of an asset. I find, too, that these large saw-milling interests, then owned by the Rentz, maintained this road while they were in operation and the road came nearer being one that would pay expenses and operated at the most favorable time, which was

310 the time when these mills were at their best, than at any other time, and that outside of the saw-mills, the business that supported this road was negligible.

I find that on November 2nd, 1917, this corporation gave public notice of its intention to cease operation and filed its petition with the Florida Railroad Commission asking for a permit to cease operations. On November 14th, 1917, a hearing was had by the Railroad Commission, and the petition denied.

On December 10th, 1917, this foreclosure bill was filed alleging insolvency and asking for a receiver and a receiver was appointed, and on December 24th, 1917, final decree was pronounced on bill and answer, which decree directed the Master to offer said property at sale as a common carrier, and if as much as \$200,000 was bid, no other offering to be made, and if no bid was received as a common carrier, then to be offered with the right to dismantle. The decree further provided that if the bid under the second offering did not exceed the first bid by \$100,000, then the bid, if any, under the first offering was to be accepted.

I find that on November 14th, 1917, the state of Florida through the Railroad Commission, filed its bill in the Circuit Court of the Eighth Judicial Circuit of Florida, Putnam County, against this defendant for a mandatory injunction restraining it from discontinuing its operations, and on November 26th, 1917, a decree was pronounced in the Eighth Circuit, enjoining and restraining the dismantling of the road, and requiring that the road continue to operate. The road continued its operations for a few days and until December 7th, 1917, when it ceased operations. On December 10th, 1917, the State of Florida, through the Railroad Commission, filed in Marion County, Florida, in the Fifth Judicial Circuit, an ancillary suit to the one filed in Putnam County, and alleged that the defendant had ceased operating its road.

On December 14th, 1917, a master was appointed to take the proofs and report if a receiver should be appointed and
311 whether the state should be made a party.

On December 22, 1917, the State of Florida, through the Railroad Commission, filed a petition for consolidation of the two suits.

On December 24th 1917, a motion to strike the state's bill of complaint and petition for consolidation was filed.

The Master took the proofs and made his findings against the state to which exceptions were filed May 11th, 1918. These exceptions were argued, and overruled, and the state's bill of complaint and ancillary proceedings were dismissed.

On December 31, 1918, the state of Florida filed another petition for intervention to which a demurrer was interposed, but it appears that these have been disposed of, so far as the records show.

On December 22, 1918, this court appointed U. S. Cummings as receiver to operate said road. This receiver was appointed because it was urgently insisted on the part of the state, through its Railroad Commission, that by proper management the road could be operated so as to pay operating expenses and a reasonable sum on the investment, and it was with an honest desire to make a test

of this matter that this receiver was appointed. The defendant corporation did not consent in terms, to the appointment of Mr. H. S. Cummings as receiver, but it did recognize the fact that he was the most available man, and if it was possible to succeed under any administration it would under his, by reason of the business connections that he enjoyed that might be used in the operation of this road. Mr Cummings was a member of the Rodman Lumber Company and controlled a large amount of freights that went out from its mill at Rodman, and would be a vast benefit to the road, although he was not dependent upon this road and had not heretofore given it anything like a fair proportion of the business that this company produced.

312 The reports of the receiver sent in from time to time were meager, quite unsatisfactory, and after almost one full year's experiment, the same being quite unsatisfactory in showing any positive result, the court ordered a sale of this property under the decree. On the Saturday evening preceeding the sale day, the State and the Receiver again appeared on the part of the receiver and urgently insisted that he could show that all expenses had been paid and that the road was doing a fair business, and would yield a reasonable income. It was late and the court accepted these statements and continued the sale.

After another month's advertising, the identical situation arose again. Late on Saturday evening before the sale day, the State by the railroad commission, and the receiver, again appeared before the court, representing that the receiver's reports would show a profit and that some \$5,000 on \$6,000 was the net result of all operations.

The Court declined to stay the sale but then advised the parties that they would have an opportunity to make good their statement, and if it should turn out that the road was operating so as to pay expenses of operation and the taxes and had some reasonable show for business, that the sale would not be confirmed.

The state then made application to intervene and was allowed to intervene. Proof has been taken before the Master who has filed his report with the testimony, and it is to this report that exception has been taken and the last hearing had.

Considerable testimony has been taken before the master and the records and the proof and different steps taken in this case and other records in other suits filed, all in connection with the operation of this road, and after a very full consideration thereof leaves no doubt in the mind of this court that this Railroad is totally insolvent, that it cannot be operated so as to pay the cost of operation and taxes, and have any net income whatever.

313 Its operation under the present receivership has been under the most favorable conditions. This receiver had contributed 64% of the freight and that unless it was under his direct control and management and operated in connection with his own business, there is no hope to control that business and the experience in the past years, he has not given a fair proportion of it, to this railroad.

When I come to consider the Receiver's showing as to what he

has earned, even after allowing him credit for some doubtful claims, and not charging anything for his personal services, I find there would just be a bare profit of a few hundred dollars between the actual cost in operation and his receipts. But if we come to consider taxes and a reasonable return on the money invested and allow anything for operating expenses to the receiver, or other head of the corporation, it would not pay operating expenses.

I find that there are now some \$12,000 to \$16,000 taxes due, and while the Railroad Commission about 14 or 16 months ago tendered its good offices in behalf of having same reduced or some good discount, from this tax matter, so far we have no tangible result, and it must be assumed in this condition of affairs that none could have been obtained, for certainly time enough has passed.

We find then in a brief summary of this matter that this is a railroad corporation wholly dependent upon the Atlantic Coast Line Railroad Company, at its northern terminus to get into Palatka and wholly dependent upon the Seaboard Air Line Railroad Company at its southern terminal, to reach Ocala. That the large saw-mill interested that supported the road at this time have been abandoned; that they have never been replaced, and that there are

no large interests now on or near the line of the road; that
314 the Rodman Lumber Company at Rodman, Florida, in which this receiver is a large stockholder, has not heretofore patronized the road except in a very limited way, that he is not in any sense dependent upon this road for the operation of his saw mill.

The result of these conditions leaves this road wholly dependent upon two or three sources, for the country is sparsely settled, the timber nearly all gone, and very little farming interests.

It is contended that this court has no jurisdiction to pronounce the decree authorizing the dismantling of the road but it is conceded that it has the right to have the mortgage foreclosed and that the property could be sold, but must be sold as a common carrier. I find nothing in our statute that confers the jurisdiction of these matters on the Railroad Commission and while I have read all of the authorities presented, there is a clear line of distinction between all of those adjudicated cases and the one now presented. It is true that the case of *People ex Rel. Hubbard, Attorney General, vs. Colorado Title & Trust Co., et al.* and *Public Utilities Commission of the State of Colorado versus same*, reported in 178 Pac., at page 6, presents nearer the precise question here involved, but that decision depends upon a construction of their statute.

I find that from all the evidence in this case, it is right and proper that there should be a decree confirming sale and directing a deed to be executed.

Counsel for the receiver has requested this court that after coming to a conclusion, to indicate some date on which the decree would be pronounced in order that the Railroad Commission
315 and the Receiver might have an opportunity of taking such action as in their judgment was necessary and proper. For this purpose a date will be fixed when a decree will be made, approv-

ing and confirming the Master's report of sale, and directing that a deed be executed and delivered and that the road be dismantled, and that the receiver will be discharged. For the purpose of allowing an opportunity to all parties to take such action as they may be advised, this court will pronounce said decree on May 12th, 1919, at Ocala, Florida, at ten o'clock A. M., statutory time.

The receiver will be continued after that date for the purpose of collecting any bills and making adjustments on his accounts, at which time the question as to compensation, if any to be allowed him, will then be determined.

These findings and conclusions have been made at such length in order to comply with the request of the solicitor for the receiver, and the date on which decree will be finally pronounced and what that decree will embrace in general terms, in order to allow all parties to take such action as they may deem necessary and this cause is continued until May 12th, 1919, as hereinbefore stated, for such other and further decree as may be necessary.

Done and ordered at Chambers at Ocala, Florida, this May 5th, 1919.

W. S. BULLOCK,
Judge

On May 29th, 1919, the Receiver filed the following paper:

316

Statement.

Earnings and Operating Expenses.

Ocklawaha Valley Railroad Company.

H. S. Cummings, Receiver.

February, March and April, 1919.

Earnings:

Freight	13,843.08	
Passenger revenue	1,605.46	
Miscel's	68.30	
Mail earnings	538.97	
		16,055.81

Operating Expense:

Maintenance ways and st.—		
Section crew pay roll	1,825.40	
Supt. roadway	375.00	
Fuel for motor cars	214.50	
Supplies	45.48	
Cross ties	355.96	
		2,816.34

Transportation—

Trainmen pay roll	1,372.48	
Enginemen " "	922.45	
Pumping " "	90.00	
Fuel for loco.	1,726.07	
Supplies	171.78	
		4,282.78

Maintenance eqpt.—

Labor pay roll	510.93	
Supplies	437.11	
Supt. equipment	262.50	
		1,210.54

Agencies—

Salaries agents	474.95	
Supplies	94.10	
		569.05

Other expense—

Superintendence	600.00	
Office expense	558.00	
Office supplies	78.40	
General expense	355.15	
Hire of equipment cars .	1,682.40	
Hire of equipment loco. .	406.10	
Office rent	15.00	
Tariffs	76.81	
Telegraph & Telephone .	106.31	
Joint facility rents	750.00	
Mail	45.00	
Car inspector	43.50	
Various assessments	86.10	
Insurance	82.50	
		4,884.27

13,762.98

Gain 2,292.83

317 I hereby affirm that this — a true and correct statement of my acts as receiver for the period of February, March and April, 1919,

H. S. CUMMINGS,
Receiver.

Sworn to and subscribed before me this the 26th day of May, 1919.
A. D.

T. C. TIPTON,
Notary Public

[S. P. SEAL.]

My commission expires April 22, 1922.

On June 2nd, 1919, complainant filed the following notice:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WM. S. HOOD, Trustee, Complainant.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, Defendant.

To the Railroad Commissioners of the State of Florida, to H. S. Cummings, Esq., and to Messrs. D. A. De Vane and E. E. Haskell:

318 You are hereby notified that on the 2nd day of June, 1919, at the hour of nine o'clock A. M., or as soon thereafter as counsel can be heard, we shall present motion, copy of which is hereto attached, to the Honorable W. S. Bullock, Judge of said Court, at his office in Ocala, Florida, and request action of the court thereon.

HOCKER & MARTIN,
Solicitors for Complainant.

On June 2nd, 1919, complainant filed the following motion:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WM. S. HOOD, Trustee, Complainant.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc., Defendant.

Now comes the complainant pursuant to the notice hereto attached, and shows to the court that S. P. Hollinrake was heretofore appointed receiver in this cause and as such receiver was left in pos-

session of certain books of account of the defendant, is now in France in the service of the Red Cross and that the said Hollinrake absented himself with and by the consent and approval of all parties at interest, and that the amounts of money handled by the said Hollinrake are very small and that the balance, if any, which would be due from the said Hollinrake, is small, and that the account books which were in the hands of the said Hollinrake, as Receiver, are now accessible in Ocala, and the complainant further shows to the court that the term for which H. S. Cummings was appointed as receiver and the term covered by the bond filed in this cause by the said H. S. Cummings, expired on the 26th day of January, 1919, wherefore, the said complainant requests that some person other than H. S. Cummings be appointed Receiver of all of the property involved in this cause, including that formerly in the possession of the said Hollinrake, as well as all the property herein which may be in possession of the said H. S. Cummings, and that the said Cummings may be required to deliver the same forthwith to such person as Receiver of this court, and in this behalf the complainant shows to the Court:

1st. That the said H. S. Cummings was appointed Receiver at the instance of the State of Florida upon the proposition of the state of Florida to properly indemnify the bondholders against any loss through operating expenses that might be incurred by the said Cummings, and the several orders of the court made in this cause show the purpose and intention of the court to be to continue the operation of the said road only for one year and as long as the bonds of the said Cummings were in force; that such period of one year expired on the 26th day of January, 1919.

2nd. That the said Cummings has been guilty of gross misconduct in not rendering to this court a full and complete financial statement up to the 26th of January, 1919, and in not on or before said date applying to said court for further instructions for the operation of said road.

3d. That the said receiver, H. S. Cummings, has misinformed this court with reference to the facts in connection with the operation of the said railroad and that E. E. Haskell appearing in behalf of the said Receiver and in the presence of said receiver, has misinformed this court with reference to the financial results of the operation of the said road.

4th. That the findings of the Master, Richard McConathy, under order of the court of March 10th, 1919, in this cause was to the effect that the said Railroad has never paid expenses and no provision has been made by which such expenses may be paid.

5th. That the court in its findings of May 5th, 1919, in this cause, confirmed the Master's report that the said Railroad had not paid expenses.

6th. That no taxes nor interest on the fair value of the road has been paid by the said H. S. Cummings, and it is apparent from the re-

sult of his operations that the road cannot be made to pay such taxes and interest.

7th. That the said H. S. Cummings has administered said office of receiver in an unfair and partisan manner and is using said railroad for the purpose of promoting his partisan view and interest.

8th. That except on the request of the bondholders no court is authorized to force the operation of an unprofitable railroad or to permit any charges against the same for operating.

9th. That mandamus will not lie to compel the operation by an insolvent railroad of an unprofitable line, nor will mandatory injunction lie or be enforced to compel operation under such circumstances.

10th. That the road is now kept in daily operation by the said Cummings, but he is claiming, nevertheless, that he is not
321 under any bond, and that the said Cummings is daily incurring expense and that it is inexpedient to fully check up the result of the operations by the said Cummings, in order that the court may know the exact results, unless the operation of the said road is stopped.

11th. That the rails and other property of the railroad company are being materially damaged due to the operation of said railroad, and the interests of bondholders are being continually jeopardized by such operation.

12th. That the purpose of the appointment of the said Cummings as Receiver, has been served, namely, to determine whether the road could be profitably operated, the result of which experiment being that said railroad could not be so operated.

13th. That the continued operation of the said railroad results in further deterioration of the property of the bondholders who have already sustained a loss of over \$40,000 by reason of the operation of same since the institution of this suit.

Wherefore, the complainant prays that some person other than the said H. S. Cummings may be appointed as Receiver to take over all of the assets involved in said cause and check out the said Cummings and report his doings in this behalf to this court.

HOCKER & MARTIN,

Solicitors for Complainant.

On June 2, 1919, the Receiver filed the following answer to above motion:

322 In the Circuit Court of the Fifth Judicial Circuit of Florida,
in and for Marion County. In Chancery.

Wm. S. Hood, Trustee, Complainant,

vs.,

OKLAHAWA VALLEY RAILROAD COMPANY, a Corporation,
Defendant.

*Answer of H. S. Cummings, as Receiver, to Motion of the
Complainant.*

(To be Heard June 2nd, 1919.)

Now comes H. S. Cummings, the Receiver heretofore appointed by this Court, and answers the allegations and showing of complainant's motion, as follows:

Answering the introductory portion thereof, he says:

That he has no knowledge of the matters therein stated as to the former receiver, S. P. Hollnake, except to the extent that this receiver was appointed as the record shows, and that as such receiver he went into the control of the physical properties of the said railroad, as also shown by the said record, on January 26th, 1918, and has, under the directions given him from time to time by the court, continued since January 26th, 1919, to operate and care for the property committed to his custody, ever since, and is now performing the same duties in relation thereto;

That there were two bonds entered into and furnished by direction of this court, one of which was in the sum of Five Thousand Dollars, conditioned substantially for the faithful performance of this receiver's duties as such, being the usual and ordinary bond required under the law in such cases, and which was conditioned substantially for the period of one year, and until discharged
323 by the Court from further duties in the premises, and which bond is and has ever been in full force and effect, the same having been renewed by consent and agreement of the surety, upon the payment and receipt of the premium charged for the same;

That the other bond substantially conditioned, so far as the surety was concerned, for the term of one year from January 26th, 1918, in the sum of fifteen thousand dollars, as an indemnity bond to the substantial end, that complainants should not suffer on account of this receiver's operations during said term of one year, loss or damage as therein stipulated, according to the understanding of your receiver has not been renewed, so far as the said surety is concerned, and for the reason, just communicated to this receiver, that the surety declined to continue the same; and in this connection he states that he considers his bond of five thousand dollars sufficient and effective for all necessary requirements of this case, especially

as he is himself financially responsible for any reasonable amount, certainly more than the fifteen thousand dollars in question in event he should transgress or act in such manner as such receiver as to merit the disapproval of this court in his conduct of the railroad affairs, and certainly as an officer of this court, if he act according to its approval, there could equitably be no reason for mulcting this receiver, just to please the spleen and unfairness of the complainant or his counsel.

And this receiver states that in all matters he has acted in good faith, according to the best of his ability, and has in all matters so acted as to equitably negative any such relief as asked for by the complainant in this motion.

And he denies that any proper showing is made in and by said motion for the removal of this receiver, who stands ready to do and perform in all things the directions of this court, as in fact he has

done in the past, notwithstanding the insinuations, spleen

324 and unfair methods used continually by the complainant and his attorneys to embarrass, hinder and make ineoperative the sincere and honest efforts of this receiver to manage, care for and operate the said railroad, with an eye single to the very best interests of the property and of the complainant.

This receiver answering the paragraph of the motion designated "1st" says:

It is true that he was appointed receiver at the instance of the State of Florida, by its Railroad Commission, by order of this court, to carry on the active operations of said railroad, until the expiration of the term of one year, and was to indemnify the complainants, as directed by this court, against loss as therein and thereby stated, but he says that according to the orders of court, in the premises, originally made, and since made from time to time by this court, this receiver has continued to so operate the same and is now doing so under the orders of this court.

That he considers the complainant is fully indemnified against loss because of his operation. First, because the regular receipts of said railroad show that the complainant is not suffering any material loss or any loss, by reason of this receiver's operations, as shown by the regular reports of this receiver, as made herein. Second, because this receiver has shown by his past performance that he can be trusted to carefully and skilfully conduct its affairs and according to the complainant's own representations to this court, is the only person competent or able to do so. Third, that this receiver is personally, financially able to comply with any reasonable order of this court in the settlement of his affairs as receiver, and in answering to complainant for any wilful mismanagement of his property and interest; and Fourth, because the complainant does not attempt to furnish or suggest another or better man, nor in any evident and succinct manner, allege to show why this receiver should

be removed.

325 And he further says that this receiver has never failed at any time to comply with and perform any act as required of him by this court, but in every instance has complied therewith, and

expects so to do so long as he is entrusted with the duties and responsibilities of his receivership.

And he says that although this court originally made appointment of this receiver for the term of one year, that it was contemplated then that as long as the same should and could be operated without substantial loss to the complainants, as specified in the directions and conditions imposed by the court, in the interests of the public, and as a right and convenience to it, it should be continued until the final determination of complainant's suit, the specific end and purpose of which was to junk or end the operations of this railroad;

And he says that the complainant is amply indemnified from any substantial loss as contemplated by the court in its order, whether the surety on said fifteen thousand dollar bond renews said bond or not, so far as it is concerned.

Answering the paragraph designated "2nd", he says:

That this receiver has rendered full and complete financial statement of his operations not only up to January 29th, 1919, but for every regular period since, and has promptly met all requests for such information, as from time to time requested and required by complainant's attorneys in the premises, and stands ready so to do, all of which is especially within the knowledge and understanding of Complainant.

That this receiver has from time to time as the necessities arising from the many motions, requests and acts of the complainant in the premises, asked for and obtained what seemed necessary by the court, for the continuance of his care and operation of this railroad property, and states that no act or request by the complainant for information of any kind in relation to the same has been
326 withheld or denied by this receiver or his agents, in the premises;

And he denies that any matter contained in this paragraph is or should be used against this receiver as in any way improper acts on his part or that should operate in any way against the continuance of his duties herein so long as this court may see fit and proper to continue its operation, especially as in fairness to many interests along the line of this railroad, the same of necessity must be continued by some one, certainly no acts of bad faith have been shown justifying his removal.

Answering the paragraph designated "3d", he says:

He denies that in any matter he has ever misinformed the court with reference to the facts in connection with the operation of the said railroad, or that his attorney in his presence has done so, either as to financial matters or otherwise, and says that this method of attempting to discredit his operations of this receivership is unfair, contemptible, untrue in every particular, and unworthy of any party seeking a court of equity for relief.

Answering the paragraph designated "4th", he says:

It is true that the findings of the master, Richard McConathy, differed in his opinion upon the testimony before him and his understanding of it, from the understanding of this receiver as to the same matters presented, but he says that the findings of said Master were predicated upon the conclusions he drew from a state of facts which differed from the understanding of this receiver, particularly with reference to a credit claimed as an available asset of his operations by the receiver, which was entirely eliminated from the consideration of the master, which as applied by the Master, made an entirely different and contrary result of this receiver's operations, to that claimed by the receiver:

But he says that this situation has been brought about by the adverse attitude of the complainant himself in his refusal to co-operate with the receiver in obtaining payment of this claim, 327 to-wit: the free time allowance on cars used by the receiver during his operations, which amount when paid would present a result entirely favorable to the claim of the receiver, notwithstanding the master's rejection thereof, and which amount when paid would result in the evident earnings of the receiver being much greater than he had been given credit for, as also, a fund out of which fair remunerations should have been and should be allowed the receiver toward his compensation for services rendered, and for the benefit of complainant's property:

And he says that with the proper earnings of the railroad paid to him, a substantially different showing in fact would exist from the findings of the master, and that said railroad had been so operated by this receiver as to entail no substantial loss, as contemplated by the court, when it appointed this receiver to operate it.

Answering the paragraph designated "5th", he says:

That the findings of the court of May 5th, 1919, as understood by this Receiver, so far as the receiver's operations were concerned, stated in substance that under his management it has barely paid expenses of operation, etc.:

In this connection in fairness to the receiver, it is proper to say that this receiver does not consider the findings of the master to express any stricture upon the operations by this receiver nor any unfavorable comment upon his operations nor criticism of his acts, but rather in effect, that from his understanding of the case, the railroad had not paid expenses, taking into consideration several substantial items that he considered expense, and denying substantial items claimed as earnings of the Railroad, by the receiver:

This receiver in his reports and intended testimony in reference to the practical running of said railroad, has never represented anything that was not so, but may have represented that 328 in his opinion the earnings of said railroad would pay all proper expenses, under reasonable conditions, and showed his conviction in reference thereto in the record of this case, when in answer to questions by the Railroad Commission Attorney in this

case, that he was willing to enter into a lease of the property for three years, guaranteeing that he would take it, operate it, and pay its proper expenses and divide the surplus over and above the items named with the complainant; and he says that the court's decree speaks for itself and in the opinion states nothing derogatory or in criticism of the operations of this receiver.

Answering the paragraph designated "6th", he says:

It is true that he, H. S. Cummings, did not pay the taxes, but it is also true that he was neither directed nor expected to pay the same, nor was it contemplated that he should do so, except upon special direction of the court, and then only in the event the earnings of the road provided the moneys to do so.

And he says that it is evidence that out of the earnings of the railroad under his operation, that up to the time of the unusual demand upon the earnings of his operations, to-wit: the expenditure of \$6000.00 upon a practically worthless engine as then was, and had been at the time this receiver took charge of its operations, this receiver had a substantial sum of money in his hands which would have paid the taxes, and the result of the receiver's operations showed something toward interest on the fair value of the road;

And he says that he was in no way responsible for the status of the property, nor the fact that it was an unprofitable investment, when he took charge of it, and alleges that he has not been in any — responsible for its failure before then to pay taxes or interest, but considers that he has demonstrated that by careful management, at least, that it need not substantially lose money by being operated.

329 Answering the paragraph designated "7th," he says:

That he was appointed Receiver of said railroad by the Court to see if by careful, proper and honest effort the same could be operated without material loss to the owners, and says that he has used every effort consistent with safety in business to operate said railroad, and utilize its earning capacity to the benefit of the owners of said property; that he understood that he was the agent and arm of the court, and that it was his duty to utilize all expedient and reasonably available means to the end that the railroad should obtain whatever patronage legitimately should accrue to its benefit, not only his own business but every business facility that could by his efforts — made to contribute to the success of the road, for the purpose of showing what its actual and prospective business was and should be, but that as to being partisan, and having any partisan views in the matter other than as one of the public, realizing the benefit that would accrue to him and his affairs by having the railroad kept in operation, he denies any such attitude, but to the contrary alleges that he has honestly and fairly acted in all matters to the benefit of the owners of said railroad; and that this paragraph is in line with the attitude of complainant towards his operation of the railroad, to-wit: antagonistic, harassing, annoying, obstructive, in fact

an enemy to anything that seemed contributive to the successful operation of the railroad under his management thereof;

And he says that he has no partisan interest nor views to work out, merely to run and operate said railroad under the directions of this court, honestly, fairly and fully perform his duties as Receiver, as he is obligated and held under the law to do.

Answering the paragraph designated "8th, he says:

330 That the fact that the court notwithstanding the stricture contained in this paragraph, which seems rather addressed to the court than in any way attacking the conduct of the receiver (who disclaims any intention to force the operation of this railroad) has seen fit to have it operated, the force and effect of this objection must be intended as a statement of the law which complainant seeks to have applied rather than that it is the law of this case, upon which, at least, this receiver is advised that opinions differ;

The showing made and earnings of the railroad show that no charges have been made against this railroad for operating nor any such course contemplated, on the contrary, the railroad is earning over and above its necessary operating expenses, as shown by the reports herein made, a comfortable sum, and that under adverse circumstances and unfortunate conditions;

Answering the paragraph designated "9th," he says:

That this is a matter of law which addresses itself to the court, and as he is advised to the discretion of the court in this particular case, and under its peculiar conditions, he concedes the question here raised is not for the receiver to argue before the court;

As receiver he does state that said railroad is now being operated by him according to his knowledge of the conditions, without loss to the owners, and in his opinion the future looks bright for better results in the future.

Answering the paragraph designated "10th," he says:

That the said road is being operated daily and reasonably satisfactorily, all things considered, but he denies that he has ever claimed that he is not under any bond; on the contrary this receiver
331 is under bond, and not only so, but is financially competent to respond satisfactorily to any likely demands that may arise out of his receivership, and holds himself ready to perform any direction of the court herein as he may be found liable;

He denies that it is inexpedient to fully check up the result of his operations, without stopping the operation of said railroad;

And he says that the same effort applied by the complainant to stop its operation, applied to help its operation, would be of considerable monetary advantage to the earnings of said railroad, and that every effort of complainant has been apparently applied to stop its operation.

This receiver stands ready to furnish any reasonable request of the complainant within any reasonable time, when directed by this court.

Answering the paragraph designated "11th," he says:

That it is untrue that the rails and other property of the railroad company, in the hands and care of this receiver, is being materially damaged by the operation of the railroad, or that the interests of the bondholders are being continually jeopardized by his operations; on the contrary, the property is growing more valuable as railroad property by reason of the receiver's management thereof, and the repairs being made thereto in all departments and said railroad is being run and operated with every detail as to safety, reasonable and necessary in its operating necessities;

Answering the paragraph designated "12th," he says:

That he admits one feature of the purpose of appointing of said Cummings as Receiver of said railroad has been served, but considers that the efforts of the complainant to embarrass and hinder the receiver, especially in the matter of his refusal to make available the payment of the free time allowance, amounting to the sum of about \$3,000.00 entirely changes the apparent result of the receiver's operations, and altogether eliminated that item from the favorable consideration of the Master, as otherwise the Master would have been obliged to report to this court that the receiver's operations had netted a substantial sum.

Answering the paragraph designated "13th," he says:

That he does not agree nor believe, that the operation of said railroad will result in any further deterioration of the property of the bondholders, but on the contrary, believes that his operations thereof is producing a small income over and above any costs of operating, and the taxes current, and shows to the court that pending the decision of the Supreme Court in the proceedings now being determined, will in no wise change the substantial costs of said property to the complainant, but rather benefit the property, and certainly benefit the public for which said railroad was originally incorporated as well as for the purposes of the complainant.

And the receiver denies that in anything shown in any proper manner or form to this court, the complainant has shown anything wherein, for cause, this receiver should be removed, and that to do so would seriously injure the public's enjoyment of the said railroad's facilities and service, and greater harm would accrue to complainant's property than under its present management which is proceeding satisfactorily for all.

H. S. CUMMINGS,

Receiver.

STATE OF FLORIDA.

County of Putnam:

H. S. Cummings, being first duly sworn states:

That he is the Receiver of the Ocklawaha Valley Railroad Company,
 appointed in the foregoing styled cause; that he has read the
 333 foregoing answer, knows its contents; that the statements
 contained therein purporting to be made of his own knowl-
 edge, are true and as to those things therein stated upon informa-
 tion and belief, he believes them to be true.

H. S. CUMMINGS.

Sworn to and subscribed before me this June 2nd, 1919.

W. S. BULLOCK,

Judge.

334 On the 27th of March, 1919, the court entered the follow-
 ing order:

In the Circuit Court of the Fifth Judicial Circuit of the State of
 Florida in and for Marion County. In Chancery.

W. S. Hood, Trustee, Complain-.

VS.

OCKLAHAHA VALLEY RAILROAD CO.

This cause coming on this day to be heard upon the petition of the
 Railroad Commissioners of the State of Florida for authority to inter-
 vene in said cause for the purpose of aiding and assisting the
 court in determining the public's rights and interests in the contin-
 ued operations of the said Ocklawaha Valley Railroad as a common
 carrier, and said cause having been heretofore referred to R. McCon-
 athy to determine whether or not said petition should be granted,
 and the said R. McConathy after having given notice to the respec-
 tive parties in the said cause and their solicitors of record having
 made his findings, said findings of the said R. McConathy are hereby
 approved and confirmed.

It is thereupon considered, ordered, adjudged and decreed that the
 Railroad Commissioners of the State of Florida, in the name of the
 State of Florida, be and they are hereby authorized to intervene in
 said cause and to file their bill of intervention presented with their
 petition for this authority.

Done and ordered at Chambers in the city of Ocala, Florida, this
 the 27th day of March, 1919.

W. S. BULLOCK,

Judge.

335 On April 4th, 1919, the Court entered the following order:

In the Circuit Court of the Fifth Judicial Circuit of Florida, Marion County. In Chancery.

W. S. Hood, Trustee.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY.

This cause came on to be heard on the petition of the complainant to remove *the* H. S. Cummings as the receiver of this road and after consideration thereof, when it is made to appear to the Court that there is now pending before Richard McConathy as Special Master of this court, an inquiry as to whether or not it is practicable to operate the said road as a common carrier, or whether or not the sale heretofore made of the said road should be confirmed by this court and by the agreement of the said parties the said report is to be made on the 9th day of this month. It further appearing to the court that the said Master is also appointed to examine into the acts, doings and accounts of the said Receiver, and is also to report on this matter at the same time. This court is of the opinion that in view of the pending matter and the very short time in which this matter is to be presented to this court, aided by the investigation of the master, that it would be unwise to remove the said receiver and appoint another for so short a period.

It is considered and ordered that the petition is continued to be heard at the same time and place as the report of the said special master heretofore referred to.

Done at Chambers in Ocala, Florida, April 4th, 1919.

W. S. BULLOCK,

Judge.

336 On May 12th, 1919, the Court entered the following order:

In the Circuit Court of Marion County, Florida. In Chancery.

W. S. Hood, Tr., Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, Defendant.

This cause coming on to be heard upon motion of W. L. Colbert for leave to institute suit against the said Railroad Company and the receiver herein and the Court being fully advised in the premises, and upon due consideration it is

Ordered, adjudged and decreed that said W. L. Colbert be allowed to institute suit against said Railroad and said receiver, either or both.

Done and ordered at Chambers in Ocala, Marion County, Florida, this — day of May, 1919.

W. S. BULLOCK,
Judge.

337 On June 2nd, 1919, the Court entered the following order:

In the Circuit Court of the Fifth Judicial Circuit in and for Marion County, State of Florida.

WM. S. HOOD, Trustee, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD CO., a Corporation, etc., Defendant.

This cause came on to be heard on motion of the solicitors for the complainant, which motion the court construes as one to remove H. S. Cummings as receiver and to appoint another receiver.

At the same time also appeared Richard McConathy, the Special Master in chancery, who has heretofore taken the proof in this cause, and moves the court for an additional compensation to him as such master; and the said motions having been argued, and the court being advised of its judgment, when

It is considered and ordered that as to the motion of the said Richard McConathy as said Special Master, that he be allowed the sum of \$150.00 for his services as master in addition to the amount heretofore allowed and taxed by this court, one-half of the said sum of \$150.00 to be now paid to the said special master by the complainant herein, and one-half thereof by the Florida Railroad Commissioners, but the court reserves the question of the final taxing of said costs as between the complainant and the Florida Railroad Commissioners until the final determination of this cause.

It being made to appear to this court that heretofore upon an announcement by this court that the report of the master as to the sale of the property under the foreclosure proceedings herein would

be approved and confirmed by this court, that a writ of prohibition issued to this court from the Supreme Court of the
338 State of Florida prohibiting this court "from approving or confirming the sale of the said carrier's property for junk, to be dismantled, or from authorizing or decreeing the dismantling, taking up or removing any of the rails or tracks of said carrier, or from exercising any further jurisdiction in said cause relating to the junking or dismantling of the said property," which said rule operates as a supersedeas to this court exercising further jurisdiction therein.

This court being further satisfied that the order of this court directing the dismantling of the road under the sale of the mortgaged property for junk had the direct effect to order that the road cease operation as a common carrier, and that it was the result and effect of this order that the prohibition superseded, and that the granting now in full of the motion would have the effect of this court now exercising a power that has been superseded, and if not directly doing so, tending toward an execution or enforcement of the decree

appealed from. It seems under the circumstances of this case impracticable to separate the operation of the road from the preservation of the property. If the grounds of removal of the receiver are sufficiently sustained, and he should be removed, this court must either evade the plain purpose and effect of the supersedeas or remove this receiver and appoint another with the accompanying power to operate the road. In view of the short time when the legality of the decree appealed from will be passed on, and the extreme difficulty to secure in so short a time another receiver to operate the road, it seems to the court that it would be impracticable to undertake to remove this receiver at this time. While it may be established upon a hearing for that purpose that the present receiver is partisan in manifesting an interest hostile to the complainant and should not be continued in such position, the court is

339 of the opinion that the best interest of all concerned would be better conserved by at least a temporary continuance of the present receiver with proper precautions and security to be hereafter mentioned.

In view of the conditions as they exist, this receiver should give another bond to protect these complainants. The condition of this road and other surrounding circumstances, show that its continued operation is too hazardous to the interests of this complainant without further indemnity than the personal responsibility of the receiver.

It is, therefore, considered and ordered that the motion to remove the receiver is continued for the further order of this court. It is further considered and ordered that H. S. Cummings within fifteen days from this date do file a bond in the sum of \$15,000 to be approved by this court, with two good and sufficient sureties, or with some guaranty company authorized to do business in the State of Florida, which bond is to be in addition to his bond as receiver, conditioned that the said Cummings shall pay the actual operating expenses of the said railroad, that is to say the costs of repairing equipment and operating the line of railroad of the Oklawaha Valley Railroad Co. during said receivership; and also conditioned that the said Cummings shall hold the said Hood, Trustee, and the Assets Realization Company, a New Jersey corporation, the bondholders harmless on account of any damage to be sustained on account of personal injuries, stock claims and operating disasters and from any lien or charge for or on account of the same, and against damage by reason of any improper use, loss or destruction of the property involved in this cause, except such as shall arise from the usual and ordinary wear and tear under proper operation thereof; and also, conditioned to pay the said complainant and the Assets Realization Company all costs, expenses and damages, including attorneys' fees

340 in case the final decree of foreclosure is affirmed, and the master's report is approved, accruing to them since the said master's report; and also, conditioned to pay all the taxes levied and assessed against said property for the year 1919. It is further ordered that the said bond shall be further conditioned to pay to the said Hood, Trustee, interest on the sum of \$150,000, at the rate of four per cent. per annum from this date. In the event the said bond is not given as herein directed within the time herein

mentioned, then this motion is continued for such other order as may be required.

Done and ordered in Chambers at Ocala, Florida, this June 2nd 1919.

W. S. BULLOCK,

Judge.

On June 13th, 1919, the court entered the following order:

In the Fifth Judicial Circuit of the State of Florida, Marion County,
In Chancery.

W. S. Hood, Trustee,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY.

This cause came on to be heard on the motion of the intervenor to modify the decree of this court of date June the second, 1919, and the same has been argued and considered by this court, and the court has considered the same and being advised of its judgment,

The court being of the opinion that so much of the said order as seeks to impose on the receiver the payment of interest at the rate of four per cent. per annum on the sum of One Hundred Fifty Thousand Dollars has the effect of violating the spirit and effect of

the order of the Supreme Court superseding the order of this
341 court; it is now considered and ordered that so much of the

said order as imposes a condition of the bond of the said receiver as to require him to "pay to the said Hood as Trustee interest on the sum of \$150,000.00 at the rate of four per cent. per annum" from the date of said decree, be and the same is modified so as to eliminate this condition from the said bond, and the motion to this extent is sustained.

It is considered and ordered that the remaining grounds of the motion be and the same are denied.

Done and ordered at Ocala, Florida, June 12th, 1919.

W. S. BULLOCK,

Judge.

On June 13th, 1919, the State filed the following paper:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and
for Marion County. In Chancery.

W. S. Hood, Trustee, Plaintiff,

VS.

OCKLAWAHA VALLEY RAILROAD Co., Defendant.

Now comes the State of Florida, intervenor in the above entitled cause, and moves the court to modify its decree of June 2nd, 1919

by eliminating the following requirements of the receiver's bond, to-wit: "And also, conditioned to pay the said complainant and the Assets Realization Company all costs, expenses and damages, (including attorney's fee) in case the final decree of foreclosure is affirmed and the Master's report is approved, accruing to them since the said Master's report."

442 And also, "It is further ordered that the said bond be further conditioned to pay to the said Hood, Trustee, interest on the sum of \$150,000.00 at the rate of 4% per annum, from this date."

And also, that that part of said order requiring said receiver "To pay all the taxes levied and assessed against said property for the year 1919" be amended to require the receiver to pay only such proportional part thereof, as the Receiver shall operate said railroad since January 26th, 1919.

This intervenor, represents to the court as grounds for said motion:

1. The matter of cost, expenses and damages, including attorney's fee, are not proper charges against the receiver.

2. The order requiring the payment of interest is not a proper charge against the receiver and should not be guaranteed by him.

3. Any funds in the hands of the receiver, not necessary to pay prior liens, constitutes the only fund from which such payments should be made.

3A. Because the order of June 2nd, 1919, modified the former one appointing said receiver, which former decree has been superseded.

4. A failure on behalf of the receiver to comply with the requirements of said order would be to accomplish indirectly that which the court says in said decree should not be permitted, that is, the removal of said receiver in said cause.

Upon a modification of the decree as requested herein, intervenor announces that the receiver will file a bond conditioned in all other respects as required by said order, within ten days.

DOZIER A. DE VANE,
E. E. HASKELL,

Solicitors for Intervenor.

343 On June 17th, 1919, the Court entered the following order

In the Circuit Court of the Fifth Judicial Circuit of Florida, Marion County. In Chancery.

WM. S. HORN, Trustee,

VS.

THE OKLAHAWA VALLEY RAILROAD COMPANY.

Order of Court.

This cause came on to be heard this day on suggestion of the receiver as to the condition of the bond as imposed by order of the court of date June 2, 1919, and subsequently modified, and at the same time tenders a bond executed by the said A. D. Cummings & Principal and C. Carmichael and J. P. Buie as sureties, qualifying as such bondsmen in the sum of \$7,500. No argument is made, but the matter is submitted to this court.

It has been a question in the mind of this court as to its further authority to deal with the matter involved in this cause since the writ of prohibition was entered. A more mature consideration induces the court to the opinion that since said prohibition issued this court should not attach other and further conditions to the bond under which prior operation by the receiver was had and which does not tend to preserve the property or to preserve its status.

The bond this date presented is refused because the showing as to the sufficiency of the sureties on the bond is not satisfactory to the court.

The defendant is allowed to present a bond, conditioned as the bond under which he heretofore operated was conditioned, and is
344 allowed five days from this date to present the same with two sureties, who are known to the court or to be established and shown to be worth in unencumbered property the amount for which they became sureties, or in some guaranty company doing business in this state, in the sum of \$15,000.

Done at Ocala, Florida, this June 17th, 1919.

W. S. BULLOCK,

Judge.

On June 17th, 1919, the State of Florida filed the following paper:
In the Circuit Court in and for Marion County, State of Florida.
In Chancery.

WM. S. HOSCH, as Trustee, Complainant.

VS.

THE OKLAWAHA VALLEY RAILROAD COMPANY, a Railroad Corporation, etc., Defendant.

And now on this June 17th, A. D. 1919, comes the State of Florida, by its attorney Dozier A. DeVane, and E. D. Huske; the said State of Florida, by its Railroad Commission intervenor as herein, and shows to the court as follows:

That heretofore this intervenor procured one H. S. Cummings to act as receiver of this court in the operation of said Oklawaha Valley Railroad Company's railway; pending this suit, the said receiver beginning so to operate the same on January 26th, 1918; that for the purposes of operating the same this intervenor procured the said Cummings in addition to his giving a bond in the sum of Five Thousand Dollars, conditioned to faithfully perform his duties as such receiver during his receivership, procured him to in addition thereto, furnish a further guaranty bond in the sum of Fifteen Thousand Dollars, guaranteeing to the complainant in this suit and the interests he represents, in said sum, against loss or damage, as required by this court; that said guaranty bond was conditioned for the term of one year from the said January 26th, 1918, and expired according to its terms on January 26th, 1919, and the said Receiver since then, has operated said railroad without surety on the said Fifteen Thousand Dollar bond, since that date, by direction of this court, or its permission given from time to time.

That this court by its order of June 2nd, 1919, required the said Cummings to furnish a bond with surety in the sum of said Fifteen Thousand Dollars, according to the conditions named and specified therein, within fifteen days therefrom, which period expired on this day.

That the said Cummings is unwilling to obligate himself personally with sureties, in the said sum of Fifteen Thousand Dollars, of indemnity or guaranty to the complainant against the additional conditions imposed in and by said order of this court dated as aforesaid, June 2nd, 1919, especially in view of the uncertain short time that in all reasonable probability will elapse pending the determination of the writ of prohibition issued herein by the Supreme Court to this Court; the adverse attitude of the complainant in refusing to aid the receiver in obtaining the payment of the proper earnings of the railroad; the uncertainty attending the term for which, in event the jurisdiction of this Court in making the decree allowing dis-

346 mantling of the railroad being operated by the receiver, is sustained; and there being no fixed time allowed the said Receiver to operate the same, absolutely prohibiting the making of any contracts for business of the railroad; all of which make it unlikely that the earnings of the road could meet the additional charges placed upon the receiver by said order, and compels the receiver from a sound business carefulness to decline to further personally guarantee to the complainant the additional items conditioned in the bond required as against his former bond and its conditions.

Therefore, however, that this intervenor's good faith in procuring said receiver to guarantee his operations from the beginning, and that the same indemnities shall inure to the benefit of the complainant, as originally contemplated and to apply to all of the time since said January 26, A. D. 1919, and until said receiver's duties in the premises may cease; and that there may not in fact exist any change in the status of interests of the parties from that originally contemplated, and existing before the writ of prohibition was issued in this case, this intervenor now shows to this court that it has procured the said receiver to furnish a bond in the original sum required and upon the same conditions as originally required, to apply for the term of said receiver's operations since said January 26th, 1919, and for such time hereafter as it may be necessary or expedient for the court to continue this receiver in operating or caring for the property of said railroad; and therefore, tenders the same to the court for the benefit of the complainant and the interests he represents for the express purpose of carrying out the original intention of this intervenor for the whole time said receiver may act herein as such, and to continue the same status of its interest in the case, so far as said receiver's liability is concerned, as before the writ of prohibition was issued herein.

347 And this intervenor prays the court shall make such order in the premises as shall pertain to equity.

All of which is respectfully submitted.

DOZIER A. DE VANE,

E. E. HASKELL,

Attorneys for the Intervenor.

On June 17th, 1919, the Receiver filed the following bond:

STATE OF FLORIDA,

County of Marion:

Know all men by these presents: That we, H. S. Cummings, & Principal, in the sum of Fifteen Thousand Dollars, and C. Carmichael and J. P. Buie, as sureties, each in the sum of Seven Thousand Five Hundred Dollars, acknowledge ourselves held and firmly bound unto Wm. S. Hood, as Trustee, and his successors in said trust, in the penal Sum of Fifteen Thousand Dollars for the true payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents;

Signed, sealed and dated this 17th day of June, A. D., 1919.

The condition of this obligation is such that whereas, the said H. S. Cummings heretofore, to-wit: On January 26th, A. D. 1918, as Receiver of the Oklawaha Valley Railroad Company, by decree of the Circuit Court of Marion County, State of Florida, in Chancery, in the suit of the said Wm. S. Hood, as Trustee, the complainant, versus The Oklawaha Valley Railroad Company, a railroad corporation under the laws of the State of Florida, the defendant, went into the active operation of said railroad as the receiver thereof, after having complied with the directions of said court, in furnishing two certain bonds therein, to-wit: one bond in the sum of Five Thousand Dollars, conditioned for the faithful performance of his duties as such receiver thereof; and another bond of guaranty or indemnity to the complainant Hood as Trustee aforesaid, in the further sum of Fifteen thousand dollars, conditioned to pay the actual operating expenses of the said railroad, that is to say, the costs of repairing, equipment and operating the line of the said railroad of the Oklawaha Valley Railroad Company during said Receivership; and also conditioned that the said Cummings should hold the said Hood, Trustee, and the bondholders, the Assets Realization Company, a New Jersey Corporation, harmless on account of any damage to be sustained on account of personal injuries, stock claims, and operating disasters, and from any lien or charge for or on account of the same, and against damage by reason of any improper use, loss or destruction of the property involved in said cause, except as shall arise from the usual and ordinary wear and tear under proper operation thereof; and whereas, the said bond of five thousand dollars, was entered into and was to continue until the term of one year, or until the further order of the court, and at the expiration of said year was renewed by the said Cummings and is now in full force and effect.

And whereas, the said guaranty bond in the sum of Fifteen Thousand Dollars by its express terms expired on January 26th, A. D. 1919, and the said Cummings by direction and permission of the court has been operating the said railroad continuously since said January 26th, A. D. 1919, and is now operating the same, however without said bond of guaranty by reason of the Surety Company, which executed said guaranty bond originally entered into declining to further act as surety upon said bond;

And whereas it was the understanding of said Cummings that he was personally bound and held under the said bond, but without surety; and whereas the said Cummings has agreed with the State of Florida by its Railroad Commission, to guarantee his operations of said railroad to the said Wm. S. Hood, as Trustee, since the said January 26th, A. D., 1919, and for such further time upon the same conditions as originally contemplated, until the further order of the court in the premises.

Now, therefore, the condition of this obligation is such that if the said H. S. Cummings shall pay the actual operating expenses of the said railroad, that is to say, the costs of repairing, equipment,

and operating the line of railroad of the Ocklawaha Valley Railroad Company during said receivership and the said H. S. Cummings shall hold the said Hood, Trustee, and the Assets Realization Company, a New Jersey Corporation, the bond-holders, harmless on account of any damage to be sustained on account of personal injuries, stock claims, and operating disasters, and from any lien or charge for or on account of the same; and against damage by reason of any improper use, loss or destruction of the property involved in this cause, except such as shall arise from the usual and ordinary wear and tear under proper operation thereof, from and since the said January 26th, A. D. 1919, and during the term and period in which he shall as such receiver, operate the same by direction or permission of the court; then this obligation to be void and of no effect; otherwise to remain in full force and virtue.

H. S. CUMMINGS. [SEAL.]

C. CARMICHAEL. [SEAL.]

J. P. BUIE. [SEAL.]

Signed, sealed and delivered in the presence of:

A. A. GREER.

E. S. SIPPLE.

350 STATE OF FLORIDA,
County of Marion:

Before me an officer duly authorized to administer oaths, personally came C. Carmichael, who being first duly sworn, upon his oath states; that he is one of the sureties upon the foregoing bond in the sum of Seven Thousand Five Hundred Dollars; that he is a resident of the State of Florida, and has sufficient visible property unincumbered within the said State of Florida not exempt from sale under legal process, to make good his said bond.

C. CARMICHAEL.

Sworn to and subscribed before me on this June 17th, A. D. 1919.

E. F. SIPPLE,

[N. P. SEAL.]

Notary Public, State of Florida at Large.

My Commission expires March 11th, 1923.

STATE OF FLORIDA,
County of Marion:

Before me, an officer duly authorized to administer oaths, personally came J. P. Buie, who being first duly sworn upon his oath states: That he is one of the sureties upon the foregoing bond, in the sum of Seven Thousand Five Hundred Dollars; that he is a resident of the state of Florida, and has sufficient visible property unincumbered within the said — of Florida, not exempt from sale under legal process, to make good his said bond.

J. P. BUIE.

Sworn to and subscribed before me on this June 17th, 1919.

E. F. SIPPLE,

[N. P. SEAL.] *Notary Public, State of Florida at Large.*

My commission expires March 11th, 1919.

351 On June 18th, 1919, the complainant filed the following petition for rehearing:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WM. S. HOOD, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, et al.,
Defendants.

Petition for Rehearing.

Comes now the complainant in said cause and respectfully represents unto this court that on the 12th day of June, 1919, an order and decree was entered by this Honorable Court in the above styled cause, modifying the decree of this court of date June 2nd, 1919, and that on the 17th day of June, 1919, this court entered another order and decree in said cause further modifying said order of date June 2nd, 1919, and complainant petitions this court for a rehearing as to the matters determined by said court in its two orders of date June 12th and June 17th, 1919, and for grounds for this petition shows.

352 1st. Because the court in its order of June 12th, 1919, assumed that there was a special order of the Supreme Court superseding all proceedings in this court in the above styled cause, whereas no such order has been entered.

2nd. Because the order of June 17th, 1919, was made at the instance of the Receiver herein and without notice to either of the parties to this cause.

3d. Because the court has misunderstood the force, purpose and effect of the prohibition proceedings pending in the Supreme Court of Florida in the case of the State of Florida ex Rel. versus W. S. Bullock, Judge, etc.

4th. Because the complainant herein is wholly without adequate protection by reason of the operation of the said road and is wholly without adequate remedy to correct any errors in the two orders of June 12th and June 17th, 1919, in that no appeal therefrom could be heard or decided until too late to afford the complainant any benefit.

5th. The said prohibition can in no wise effect, interfere with or impair this Court's power to appoint and discharge receivers, fix the amount of their bonds, or do any other thing usual, proper or necessary in ordinary mortgage foreclosures.

Wherefore, petitioner prays this court to vacate and set aside said two orders of date June 12th and June 17th, 1919, heretofore entered in this cause.

Respectfully submitted.

HOCKER & MARTIN,
Of Counsel for Complainant.

353 STATE OF FLORIDA,
County of Marion:

Before the undersigned authority personally came E. H. Martin who being by me first duly sworn deposes and says that he is one of the solicitors for the complainant in the above styled cause, and that the statements of fact contained in the foregoing petition for re-hearing are true to the best of his knowledge, information and belief.

E. H. MARTIN.

Sworn to and subscribed before me this the 18th day of June, 1919.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

354 On June 27th, 1919, the defendant Railroad Company filed the following paper:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WM. S. HOOD, Trustee, Complainant.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, et al.
Defendants.

The State of Florida, intervenor, will please take notice that we shall call up for argument before the Honorable Judge of said Court, at his office in Ocala, Florida, on June 27th, 1919, at the hour of nine o'clock in the forenoon or as soon thereafter as counsel can be heard, petition for re-hearing, copy of which is hereto attached.

HOCKER & MARTIN,
Solicitors for Complainant.

STATE OF FLORIDA,

County of Marion:

Before the undersigned authority personally came E. H. Martin
355 of the solicitors for the complainant in the above styled
cause; that on the 18th day of June, 1919, he deposited in
the United States mail at Ocala, Florida, in an envelope securely
sealed and postage prepaid, a true copy of the foregoing notice,
together with a true copy of petition for re-hearing, therein referred
to, which envelope was addressed to D. A. De Vane, Esq., Tallahassee, Florida, who is counsel for the intervenor, State of Florida, in
said cause, that Tallahassee, Florida, is his post office address and
that in due course of mail the said envelope with its enclosures
should reach its destination on the 19th day of June, 1919.

E. H. MARTIN.

Sworn to and subscribed before me this the 27th day of June,
1919.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

356 & 357 STATE OF FLORIDA,

County of Marion:

I, P. H. Nugent, Clerk of the Circuit Court in and for the County
of Marion, State of Florida, do hereby certify that the foregoing
pages numbered from one to Two hundred Eighty inclusive, contain
a correct transcript of the record of all of the proceedings, except
the evidence, in the case of William S. Hood, Trustee, complainant,
vs. Oklawaha Valley Railroad Company, defendant, and State of Florida,
Intervenor, pending in the Circuit Court of the Fifth Judicial Circuit
of Florida, in and for Marion County, in Chancery, as appears upon
the records and files in my office.

In testimony whereof I have hereunto set my hand and affixed
the seal of said Court, this the 2nd day of July, 1919.

P. H. NUGENT,
*Clerk of Circuit Court in and for County of
Marion, State of Florida.* [SEAL.]

- 358 Transcript of Record of Proceedings in the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Marion County, in Chancery, in the Suit of State of Florida, Complainant, vs. Ocklawaha Valley Railroad Company, a Corporation, defendant, therein lately pending.

On December 10th, 1917, the complainant filed the following:

To the Honorable William S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, in and for Marion County, in Chancery:

The State of Florida, complainant, by D. C. McMullen, Special Counsel for the Railroad Commissioners of the State of Florida, by them directed to sue in its behalf, brings this its bill of complaint against the Ocklawaha Valley Railroad Company, a corporation, organized and existing under the laws of the State of Florida, defendant, and Assets Realization Company, a corporation, with office at 43 Exchange Place, New York City, in the State of New York, and thereupon your orator complains and says:

1st. Your orator respectfully represents unto your Honor that the defendant, the Ocklawaha Valley Railroad Company, is a railroad corporation organized and existing under the laws of the State of Florida, and enjoying all the rights, privileges and benefits thereof. That it owns a line of railroad from Silver Springs in the County of Marion to a point of junction with the Georgia Southern & Florida Railroad, near Palatka, in the County of Putnam, in the State of Florida, the said line so owned being forty-five and one-half miles long. That the property of the defendant, both real and personal, is within the County of Marion, in the Fifth Judicial Circuit, and the County of Putnam in the Eighth Judicial Circuit.

- 359 That the main place of business or office of the said Ocklawaha Valley Railroad Company is in the City of Ocala and County of Marion aforesaid.

Second. Your orator further represents unto your Honor that along the line of road operated by the defendants are the following places: Ocala, Silver Springs, Oak Junction, Burbank, Daisy, Fort McCoy, Bay Lake, Orange Springs, Kenwood, Rodman, Stokeley and Palatka. That there are a large number of people, the approximate number your orator has no convenient means of ascertaining, who are dependent entirely upon the defendant for transportation service, there being no other railroad or common carrier that could be conveniently reached by the people residing in the territory served by the said Ocklawaha Valley Railroad Company. That the patrons of the said road are engaged in various agricultural, commercial and manufacturing pursuits.

Third. That the Ocklawaha Valley Railroad Company notified its patrons that it would not operate its trains after November 30th, 1917. That your orator was informed and believed that it was the

intention of the said defendant to dismantle its road, take up its track and abandon the discharge of its duties as a common carrier.

Fourth. Your orator further represents unto your honor that it would be ruinous to the people along the line of defendant's road for it to discontinue operating its trains.

Fifth. Your orator further represents that heretofore it filed in the Circuit Court in and for the County of Putnam, a bill of Complaint addressed to the Honorable James T. Wills, Judge of said Court, asking for an injunction restraining the Ocklawaha Valley Railroad Company, its officers, agents and employees from discontinuing their service as a common carrier and requiring them to continue operating one mixed train each way daily, except Sunday, over every part of the line of the said Ocklawaha Valley Railroad Company between Ocala and Palatka, and enjoining them from taking up or moving any of the rail or track belonging to the said Ocklawaha Valley Railroad Company. That upon hearing an injunction or restraining order as prayed for, was granted to continue until the further order of the Court.

Sixth. Your orator further represents unto your honor that at said hearing at the time said injunction was granted, it was stated by counsel for the Ocklawaha Valley Railroad Company that the said Railroad Company was unable to provide for its operation, and that it would not continue to operate its trains after the 30th of November, 1917. Your orator is informed and believes and upon information and belief alleges the truth to be that the said defendant has discontinued service or if pretending to render any service is not rendering such service as required by the statutes of the State of Florida, in such cases made and provided, and that it is necessary for the interest of the public and the patrons of said road, that a receiver should be appointed to take charge of the said road and operate the same, in order that the purpose for which the said Ocklawaha Valley Railroad Company was created shall not be defeated, and in order that the rights and interests of the public along the line of said road may be protected.

Seventh. Your orator further alleges that the Traffic Officer of the Emergency Fleet Corporation of the United States Government has twice telegraphed to the Railroad Commissioners of the State of Florida about the proposed discontinuance of service by the defendant, the Ocklawaha Valley Railroad Company, alleging that there was a considerable amount of government material being secured from along the line of said road, and that a discontinuance of service now would seriously handicap the movement of materials used in the construction of ships for the United States Government.

Eighth. Your orator further represents unto your Honor that the said Assets Realization Company has some interest as bondholder, lienor or creditor of some character of the said Ocklawaha Valley Railroad Company.

Forasmuch as your orator is without remedy in the premises except in a court of equity, to the end that the defendants shall true answer make to each and every of the foregoing allegations, but not under oath, answer under oath being hereby waived, and that your honor may make and enter an order of this honorable court appointing a receiver for the said Ocklawaha Valley Railroad Company, and its assets, to take possession thereof and operate the same until the further orders of this Court, and to exercise all powers subject to the authority of this honorable Court that are necessary or proper for the operation and maintenance of the said road and its equipment, and for such other and further relief in the premises as to your honor shall seem meet and to equity doth appertain, such relief being asked as incidental to the injunction suit pending in the Eighth Judicial Circuit as above mentioned.

And may it please your honor to grant unto your orator the State's most gracious writ of subpoena directed to the defendants, the Ocklawaha Valley Railroad Company and Assets Realization Company, in accordance with the rules and practice of this Honorable Court, and your orator will ever pray.

D. C. McMULLEN,
Solicitor for Complainant.

STATE OF FLORIDA,
County of Leon:

Before the undersigned authority personally appeared R. Hudson Burr, who first being duly sworn, deposes and says that he is the Chairman of the Railroad Commissioners of the State of Florida, and that he believes the Assets Realization Company is a foreign corporation with its office at 43 Exchange Place in the City of New York and the state of New York, and that order for publication is necessary to secure jurisdiction.

R. HUDSON BURR.

Sworn to and subscribed before me this fourth day of December, A. D. 1917.

[N. P. SEAL.]

LEWIS G. THOMPSON,
Notary Public.

My Commission expires April 19, 1919.

362 On December 14th, 1917, the Court made the following order:

In the Circuit Court of the Fifth Judicial Circuit of the State of Florida in and for Marion County. In Chancery.

THE STATE OF FLORIDA, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD CO., a Corporation, and ASSETS
REALIZATION CO., a Corporation, Defendants.

Bill for Receiver.

This cause this day came on to be heard after notice on the part of the State of Florida by D. C. McMullen, Special Counsel for the Railroad Commissioners of the State of Florida, of an application for the appointment of a Receiver for the Ocklawaha Valley Railroad Company, a corporation, and the same has been presented on the part of the said Railroad Commissioners, present Mr. D. C. McMullen, their Solicitor, and Mr. William Hoeker, solicitor for the Ocklawaha Valley Railroad Company, a corporation; and also at the same time appeared Mr. S. J. Hilburn in the interest of citizens of Palatka and people living along the line of said railroad; and at the same time Mr. H. M. Hampton in the interest of the citizens of Ocala and the Board of Trade of Marion County, Florida; and the said matter has been discussed and it is made to appear to the Court that heretofore there has been filed before the Judge of the Eighth Judicial circuit of Florida, on the part of the complainant in this cause, an application for mandatory injunction against the Ocklawaha Valley Railroad Company, and that a temporary order for such injunction has issued and that at the time of such application there was an answer and since that time there has been filed a motion for the dissolution of such temporary injunction and that matter is still pending. It is also made to appear to the court that on the same day that the bill in this cause was filed, W. S. Hood, Trustee, filed a bill in this court for the foreclosure of a trust deed on the property of the said railroad company, in behalf of the bondholders, in which cause this court appointed S. P. Hollinrake as Receiver and that said S. P. Hollinrake has qualified and is now
363 acting as Receiver under said appointment.

At this time this court is not prepared to definitely determine whether or not it is proper that this complainant should be made a party to the suit in which a receiver has been appointed, or whether it should ever be made a party, and it being made to appear that the public have certain rights and interests as well as this defendant, and that it would be impracticable on an argument of this kind to determine just what order to make, the court is of the opinion that this matter should be referred to a special master to take testimony within a limited time and report to this court whether any other or further order should be made and whether or not any other or further receiver or receivers shall be appointed, and espe-

cially to take proof as to whether or not this court should make an order requiring the receiver to operate the said railroad.

It is therefore considered and ordered that Richard McConathy, a practicing attorney of this court, be and he is hereby appointed Special Master in Chancery for the purpose of taking proof herein, and to report the same, together with his findings, to this court. And the Special Master is directed to immediately give notice to the parties herein before named of the taking of such testimony upon the allegations and statements contained in the said bill, and to report upon all the questions of law and fact raised thereby, together with such other recommendations as may appear to him to be pertinent and proper in connection with the questions involved in this case, and that he make said report in a period of time not to exceed ten days from this date.

Done and ordered in Chambers in the City of Ocala, Florida, this 14th day of December, A. D. 1917.

W. S. BULLOCK,
Judge.

On the 17th day of December, 1917, complainant filed subpoena in chancery as follows:

The State of Florida to all and singular the Sheriffs of the State of Florida:

364 To Ocklawaha Valley Railroad Company, a corporation, and Assets Realization Company, a corporation, Greeting:

You are hereby commanded and strictly enjoined that laying all other business aside, and notwithstanding any excuse, you personally be and appear before the Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, Marion County, on Monday, the 7th day of January, A. D. 1918, at the Court House of said county, to answer to a bill of complaint exhibited against you in our said court by State of Florida, and to do further and receive what our said court shall have considered in that behalf.

And this you are not to omit under penalty of Five Hundred Dollars.

Witness The Hon. W. S. Bullock, Judge of our said Court this the 10th day of December, A. D. 1917.

P. H. NUGENT,

Clerk of the Circuit Court, Marion County, Florida.

[CLERK'S SEAL.]

By RUTH ERWIN, D. C.

Thereafter, on the 22nd day of December, 1917, the complainant filed the following paper:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County,

STATE OF FLORIDA, Comp.,

VS.

Ocklawaha Valley Railroad Co., a Corporation, Defl.

Now comes the complainant in the above entitled cause and represents unto the court that after the filing of its bill of complaint in the circuit court for Putnam County, Florida, for a mandatory injunction restraining the defendant in this cause from discontinuing the operation of its railroad for passengers and freight from the city of Ocala, in Marion County, Florida, to the city of Palatka, Putnam County, Florida, and on December 10th, 1917, this complainant filing its ancillary bill of complaint in the above entitled cause for the appointment of a receiver in said cause, that on the same day and within a few hours thereafter, Wm. S. Hood, Trustee, filed a bill of complaint against the defendant herein named for the foreclosure of a mortgage trust deed against all the property of the defendant company, and in said bill prays for the appointment of a receiver, not for the purpose of operation but for the purpose of holding the assets of said company intact until decree of this court in said cause.

Complainant further represents unto the court that the defendant has discontinued the operation of its said trains between Ocala and Palatka or upon any part of its line, and that said property is now in the hands of S. P. Hollinrake, as receiver, without authority to operate said line of railway, appointed by an order of this court upon the application of Wm. S. Hood, Trustee, in his suit pending in this county; that said application for said receiver was made by the complainant in said suit without any notice to the complainant herein or an opportunity for a motion of the complainant herein for the consolidation of said suits.

Wherefore, the complainant now moves the court for an order consolidating the suit of the complainant herein with the suit of Wm. S. Hood, Trustee, against the Ocklawaha Valley Railroad Company, and an order making the party complainant herein a party to said suit.

Complainant further represents unto the court that the evidence of the said S. P. Hollinrake, the receiver now in charge of said property under the order of this Court, discloses that the said receiver has no intention of operating the said line of railway and claims to have no funds for the operation of said line of railway and that the stockholders of the said company decline and refuse to furnish him or to furnish the officers and manager of said corporation with any funds whatever for the operation of said line of railway for its patrons heretofore served by it.

Complainant now offers to the court to produce a receiver thoroughly competent, financially able and responsible, and willing to take charge of and operate said line of railway under the order and direction of this court as receiver, to make such repairs to the railway and physical property of said defendant company so that the same may be operated for the use and benefit of the public of said State and defendant's patrons for a term of one year and longer, if required by the court to do so, and will at the expiration of said term surrender said property upon the order of this court free and clear of any and all liens for maintenance and operation of said line of railway during said receivership, and if the proceeds realized from the operation of said railway by said receivership during the term of said receivership are not sufficient to pay all maintenance and operating expenses and any compensation for the receiver for his services as receiver in said cause, said receiver will make up any deficit so incurred by him and will make no charge for his service as receiver in said cause.

Wherefore, the complainant moves, after the consolidation of said suits, for the removal of the receiver heretofore appointed by said court in the suit of *Wm. S. Head, Trustee, vs. against the Oklawaha Valley Railroad Company*, and the appointment of such receiver in said cause as will assume the responsibilities above agreed to to be assumed with directions by this Honorable Court to immediately put in operating condition and operate as a common carrier said line of railway.

DOX C. McMULLEN,
Solicitor for the Complainant.

On December 24th, 1917, the defendant Oklawaha Valley Railroad Company, filed the following motion:

In the Circuit Court of Marion County, Florida. In Chancery.

STATE OF FLORIDA, Complainant,

vs.

OKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, and
ASSETS REALIZATION COMPANY, a Corporation, Defendants.

366a Comes now the defendant Oklawaha Valley Railroad Company and moves the Court to strike from the files in the cause the alleged motion and offer filed herein on the 22nd day of December, 1917, the grounds of this motion to strike being as follows:

1st. There is no law or rule permitting consolidation of suits in equity.

2nd. The rules in equity requiring necessary parties to be made defendants and permitting others interested to intervene obviate the necessity for the consolidation of actions in equity.

3rd. Under all statutes and rules which do not permit consolidation of causes, the theory is that several are permitted to join as com-

plainants against a defendant in the prosecution of concentric claims not adverse to one another.

4th. Consolidation of actions even when provided for by rule or statute is not permitted where the complainants seek wholly different relief.

5th. The proposition to furnish a particular individual as receiver who proposed to undertake to do certain things, has no place in any pleading and the court is without adequate means of enforcing it.

6th. It is apparent from the evidence of the state's witnesses and the uncontradictory evidence of the defendant's witnesses that the railroad cannot be operated with safety for some months.

7th. The proposition contained in said motion makes no provision for the payment of taxes now due nor for effecting immediate indispensable repairs, nor is any assurance given that the proposed receiver will pay any claims for damages which may arise by reason of his operation of said railroad.

8th. The apparent purpose of the motion to consolidate is to relieve the complainant of the necessity of bringing a new suit to get necessary parties defendant before the court.

9th. The public policy of the state is reflected by the laws governing contractive, the rules of the Florida Railroad Commission and Interstate Contractive Commission, and it is apparent that the Court through its Receiver cannot operate said railroad in compliance with said laws and rules, and how, it, allowing may be the proposition made by those here claiming to represent the state, neither they nor this court should wish to embark in the operation of a railroad unless it appears with reasonable certainty that same can be operated in compliance with the laws and rules governing contractive carriers.

HOCKER & MARTIN,

Solicitors for the Defendant, Oklawaha

Valley Railroad Company.

On December 24th, 1917, the defendant Oklawaha Valley Railroad Company, filed the following paper:

In the Circuit Court of Marion County, Florida. In Chancery.

STATE OF FLORIDA, Complainant,

VS.

OKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, and ASSETS REALIZATION COMPANY, a Corporation, Defendants.

Now comes the defendant Oklawaha Valley Railroad Company and shows the court that since both this defendant and the State announced that it had no further testimony to offer upon reference to the Hon. Richard McConathy, Special Master, counsel for the

state submitted in writing what purports to be a proposition to furnish a receiver to operate the road upon certain conditions.

Therefore, this defendant asks leave to file in its behalf the following affidavit in addition to proofs already submitted.

HOCKER & MARTIN,

*Solicitors for the Defendant, Oklawaha
Valley Railroad Company*

239 STATE OF FLORIDA,

County of Marion:

before the undersigned authority personally appeared W. Hocker, who being first duly sworn deposes and says that he is a member of the firm of Hocker & Martin, who have been general counsel for the defendant Oklawaha Valley Railroad Company from the early summer of 1915 until the said road ceased to operate; that there are now pending in the courts two suits each for Five Thousand Dollars' damages based upon claims of unlawful occupations by the defendant of certain lands in Putnam County, Florida over which something more than a half a mile of main-line track of the defendant railroad is constructed, and the said suits may result in the recovery of damages for the sums claimed or may force the defendant to bring condemnation proceedings for the purchase of said lands, or may force the defendant to reconstruct its main line track around the land involved in said suits, which would probably necessitate the construction of a mile and a half or two miles of additional track in order to avoid crossing the lands claimed by the plaintiffs in said suits; that at least one fine has been imposed against the defendant by a suit in the Federal Court in the last twelve months, for defective equipment under the Interstate Commerce Rules, and that the fine and costs in such case amounted to about One Hundred Fifty Dollars; on several other occasions the inspectors for the Interstate Commerce Commission have condemned certain parts of the equipment and the defendant has only escaped prosecution through the courtesy of such inspectors; that during the last twelve months the defendant has paid out about Five Hundred Dollars in settlement of alleged personal injury cases, one of such cases growing out of the accidental killing of one individual and that such claims are liable to occur at any time; that the said railroad is not fenced as required by law and numerous claims for killing live stock are filed against the defendant; that in order to comply with the re-

360 cent Act of Congress requiring information to be filed with the Interstate Commerce Commission before June 30th, 1918

it is necessary for the defendant or anyone operating said line of railroad to spend about a thousand dollars in necessary surveys and getting up the data required; that affiant is informed and believes that one H. S. Cummings of the Rohman Lumber Company, who testified in this cause, is the party whom the state offers to furnish as Receiver and the testimony of the said Cummings speaks for itself with reference to his previous patronage of the defendant mil-

and, and the little need of the Rodman Lumber Company for the service of the defendant railroad.

WM. HOCKER.

Sworn to and subscribed before me this the 24th day of December, 1917.

MABEL JOHNSON,

[S. P. 6666.]

Notary Public.

On December 31st, 1917, the Master filed the following report:

In the Circuit Court of the Fifth Judicial Circuit of Florida, Marion County. In Chancery.

THE STATE OF FLORIDA, Complainant,

vs.

OCELAWAHA VALLEY RAILROAD COMPANY and Others, Defendants.

This cause was referred to the undersigned special master in chancery, by an order of December 14th, 1917, with instructions to hear the testimony, report same and my findings.

I gave notice to complainant's attorney of record, Mr. D. C. McMullen, Mr. S. J. Hillburn and H. M. Hampton, representing interested shippers over the defendant railroad, and Mr. William

Hocker, attorney for said road, that I would sit in the case

on December 21st, 1917, which notice is herewith returned. On that date Mr. Duziel A. De Vane, counsel for the Railroad Commission of Florida, Messrs. Hampton & Traubman, representing citizens and others interested as shippers, and Hocker & Martin, attorneys for defendant railroad, appeared before the master at his office in Ocala, Florida, Hon. R. H. Burr, Chairman of the Railroad Commission also being present and participating in the taking of the testimony. Thereupon the following testimony and evidence was introduced:

Bill, answer and order of Judge Wills of November 26th, 1917, upon said bill and answer and the affidavits filed by defendant in the case in the Putnam Circuit Court of State of Florida, vs. Ocala-Valley Railroad Company, marked exhibits A, B, & C.

Examination of witnesses, T. I. Arnold, H. S. Cummings, W. J. Wilson, F. M. Chaffee, W. C. Bogue, T. P. Denard, G. W. Gents, J. W. Bushnell, M. R. Atkinson, J. J. Hartz.

Telegrams R. L. Brown, T. O. F. P. Corporation to R. Hudson Burr, Chairman, etc., of Nov. 18, 1917, and December 3d, 1917, exhibits F & G.

Report of F. W. Bushnell to R. R. Commission, dated Dec. 8th, 1917.

Ft. McCoy receipts.

Map of Florida of date April, 1916.

First.

The bill in this case was filed on December 10th, 1917, in the name of the State of Florida by the attorney for the State Railroad Commission by direction of said Commission against the Ocklawaha Valley Railroad Company (hereinafter referred to as the Company), and the Assets Realization Company, the latter not yet brought before the court by process.

The complaint is that the company chartered under the laws of this state, is about to discontinue the operation of its business as a common carrier of freight and passengers over its line of 45½ miles

371 from Silver Springs, to its junction with the Georgia Southern & Florida Railroad near Palatka; that complainant believes on information that it intends to dismantle its road and abandon its duties as a common carrier; that it would be ruinous to the people along its line for it to discontinue its operation of trains.

It is further alleged that in a suit brought by the state against the company in the Putnam Circuit Court that court enjoined the company from discontinuing its services as a common carrier, and from taking up its rails until the further order of the said court. This order is dated November 26th, 1917. It further appears that on the hearing of the said application for said injunction counsel for the company announced that it was financially unable to operate the road and would cease to do so on November 30th, 1917, and that it has done so.

The prayer is that this court appoint a receiver to take possession of and operate the road, and for such relief as the court deems proper "such relief being asked as incidental to the injunction suit" in Putnam County.

No answer has been filed.

Second.

On December 14th, 1917, the motion to appoint a receiver was heard, and the court entered its order referring the entire matter to the undersigned as a special master to take the testimony "upon the allegations and statements of the bill, and to report upon all questions of law and fact raised thereby, together with such other recommendations as may appear to him to be pertinent and proper in connection with the questions involved in this case."

It is urged that the State of Florida has no statutory authority to bring this bill.

This suit is in the name of the State at the instance and in behalf of the Railroad Commissioners to enable them to enforce or procure the courts to enforce the supposed right that the people of the State have to require a public common carrier to discharge its functions in their behalf. It is true that section 2921 General Statutes as amended, page 1541, Florida Compiled Laws, 372 does not mention a receiver in its enumeration of matters of relief, but the last paragraph of that section reads:

"And said commissioners are hereby given and granted full authority to do and perform any act or thing necessary to be done to effectually carry out and enforce the provisions and objects of this act."

The object of the act creating the commission was to establish a body that would regulate and control (of course in a reasonable way) the railroad systems of the State in so far as the public interests are concerned. In fact, the statute expressly says so:

"All presumptions shall be in favor of every action of the commissioners and all doubts as to their jurisdiction and powers shall be resolved in their favor, it being intended that the laws relative to the railroad commissions shall be deemed remedial laws to be construed liberally to further the legislative intent to regulate and control public carriers in the public interest."

Par. 13, Sec. 2993, Fla. Com. Laws, page 1521.

It would be a remarkable thing for the commission to be empowered to protect the public in many of the minor affairs, and then denied the power to appeal to the courts to prevent the total destruction of its rights by the carrier ceasing to serve the public at all.

In view of the extraordinary privileges granted by the State to public corporations, and the interest the public has in their maintenance and operation, I am satisfied that the state as the guardian of these interests, has, without a specific statute to that effect, the right to appeal to the courts to protect these interests, and to force the performance of all duties to the public under proper circumstances. I am satisfied that a court of equity is the proper
373 and best tribunal to take jurisdiction in such cases.

In the Texas case of Texas Trunk R. R. Co. vs. State, ex rel., etc., 18 S. W., 199, it was held that a receiver could be appointed in a suit by the state to forfeit the railroad company's charter.

Under the facts disclosed by this record, I am unable to see what other relief could be given where the company is without funds.

I find that this court has jurisdiction of the matter set forth in the bill and has the power to appoint a receiver to operate this railroad.

It is suggested that some conflict might arise because of the injunction mentioned above and that this court has already appointed a receiver to take care of the property at the instance of the trustee under the mortgage. It would be to the interest of the state obtaining the injunction to have the road operated, so it would not object, in fact, could not. The receivers being appointed by this court it could handle them without trouble. So I see no obstacle in this regard.

Do the facts disclosed by this record justify the appointment of a receiver to operate this road?

The reason advanced by the company for ceasing to operate is that the business does not amount to enough to pay operating expenses, that the road bed is in such condition by reason of rotten ties and woodwork supporting trestles, that it is dangerous to run

trains over it, and that the company has no funds to repair or pay operating expenses; also, that its locomotives are in very bad condition. It also appears that a suit is now pending to foreclose a mortgage of the property, and it has gone to a decree. In brief, the company is broke, and in no condition to borrow.

The state proved by T. I. Arnold that from this mill on the Seaboard Railroad he gave the Ocklawaha Valley Railroad about \$2,000, 150 cars a year.

Mr. Cummings says he has a mill near this road and as long
374 as the war lasts could give it 10 to 15 cars of lumber a day into Palatka. Don't know what the company gets out of this. Thinks the two roads receive 4 to 5 hundred dollars a month from his other incoming business.

Mr. Wilson testifies that he has a tie business dependent on this road. That he can furnish 200 cars of ties and 50 cars naval stores per annum. Page 10. That his timber will hold out two or three years. His incoming receipts about 30 to 40 cars a year; mostly from Jacksonville. 16. Chalfee & Bogue testify as to farming and trucking output along that road.

T. B. Benard furnishes a statement for 1916, and 11 months of 1917, of amount of local tickets sold at Ft. McCoy, the cash fares collected by conductors over the whole road and the cash for prepaid freight and collect freight at that point. For 1916, it is \$13,134.50 and 1917, \$6,892.10. Fort McCoy is the principal point on the road.

Mr. Ganto testifies as to the physical condition of the roadbed. He says it is very much in need of ties and large timbers. He is a section foreman with three hands under him and also, the road has three other section —, \$5.00 a day for each section.

J. H. Bushnell, a maintaining engineer of railroads, testifies that he has recently inspected this road. He goes into details as to its condition and says it is bad on account of rotten ties and trestle timber. His conclusion is that it would require \$10,000 to put the road in safe condition and it must be expended at once. Bushnell was called by the state, M. R. Atkinson called by the company fixed his outlay at \$15,00.

J. J. Hazer testifies as to the locomotives owned by the company. Says two are nearly 30 years old, boilers in bad condition and the other is in bad condition. Had the company a shop to do the work it would require \$9,000 or \$10,000 to put the three in "pretty fair condition."

J. V. Tarver, the auditor of the company, and in its employ since about April, 1915, testifies and furnishes a statement showing a loss every year since that date, and a total of \$35,531.51.

375 It is so perfectly evident that the road has been a financial failure since it was built, and especially since the present company obtained it, owing to want of business, that I do not deem it necessary to refer more minutely to the testimony. The business arising from the farming and vegetable industries is very small.

It is plain that the company has no funds to either repair or operate this road; that its income will not meet these demands; that a

receiver would not be able to borrow on certificates or otherwise, so that if the court appointed a receiver it would not be able to operate the road. It was suggested that the business could be conducted by fewer employees, but I hardly think it can.

I find as a matter of fact:

1. That the company is wholly without means to make the repairs necessary to make its road bed safe to be traveled over.

2. That it would require at least \$11,000 to make the necessary repairs to the roadbed.

3. That its locomotives are in very bad and unserviceable condition and to repair them would require, say \$12,000.

4. That the company has no money and most probably cannot obtain it, to make said repairs.

5. That the operation of this road for the past two and a half years has been at a loss of about Thirty-five Thousand Dollars.

6. That the probability of any appreciable increase of business is very remote.

7th. That a receiver could not borrow the money to make the necessary repairs or operate the road; especially as the road now has a very large bonded debt secured by mortgage on the property over it.

As a matter of law I find:

That a receiver will not be appointed to operate a railroad at a loss.

That a railroad company will not be required to operate at a loss, especially where it is hopelessly insolvent.

As the master is hurried to get this report prepared he will not undertake to quote the authorities but cite a few in point.

Morrowetz on Private Cor. (2 ed.), sec. 1119.

Jack vs. Williams, et al., 113 Fed. 823, a full discussion affirmed in 145 Fed., 281.

33 Cyc., 636.

State vs. Dodge City, etc., 36 Pac., 755; 24 L. R. A., 564, an enlightening opinion.

I recommend that the motion for the appointment of a receiver be overruled.

I hardly think it proper for me to pass on the motions filed in this cause on December 22 and 24.

Respectfully submitted, this December 28th, 1917.

RICHARD McCONATHY,

Special Master.

1917, Dec. 31st, the exceptions to the above report are overruled.

R. McCONATHY,

Special Master.

Master's Costs.

4 days, \$8.00; 14 filings, .70; 12 oaths .72; Notice .50.....	9.92
Drawing report, \$2.75; testimony 26325 words, \$64.00.....	66.75
	<hr/> \$76.67

R. McCONATHY.

Paid March 1/18.

R. McCONATHY, S. M.

Stenographer's fees paid by R. McConathy, March 3, 1918.

B. J. HUNTER, *Ex'r.*

377 The State of Florida, to R. McConathy, Special Master,

1917.

Dec. 2.

4 days, 8.00; 14 filings, .70; 12 oaths, .72.....	Dr. 9.42
2 Notices, .50; Drawing Report, 2.75.....	3.25
Testimony, 26325 words.....	64.00

76.67

1918.

Feb'y. Allowance per order Court.....100.00

176.67

Vs.

Ocklawaha Valley Railroad Co. et al., Marion Cir. Ct.

Paid per Warrant #4503, dated Mch. 1st, 1918.

R. McCONATHY,

*Special Master.*Filed Mch. 4, 1918, P. H. Nugent, *Clerk.*

On January 5th, 1918, the defendant Ocklawaha Valley Railroad Company, filed the following demurrer.

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

STATE OF FLORIDA, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc., Defendant.

378 Now comes the Ocklawaha Valley Railroad Company, a corporation organized and existing under the laws of the State of Florida, and says that there is no equity in complain-

ant's bill and demurs to said bill and assigns severally the following points of law to be argued:

1st. That there is no equity in complainant's bill.

2nd. That it does not appear that the Florida Railroad Commission is authorized to instruct the filing of such bill or has any right to use the name of the State in a suit brought for the purposes stated in said bill.

3rd. That it does not appear that the attorney for the Railroad Commission has any authority to use the name of the State of Florida in the prosecution of the case indicated by the complainant's bill.

4th. That no such case is made or stated as would entitle the court to grant the relief asked in said cause, upon the theory that said proceeding was ancillary to the former suit brought by the state in another circuit in which a temporary injunction has been granted.

5th. That it is improper to ask this court to enforce the relief prayed for in this bill as ancillary to the temporary mandatory order referred to in the bill.

6th. That prior to the final decree ancillary writs and proceedings are only resorted to for the purpose of retaining the jurisdiction of the court over the subject matter or to retain within the jurisdiction of the court the persons of the defendant in order that the court may enforce any final decree that may be proper to be entered, and it is improper to entertain an alleged ancillary bill filed in our court to accomplish the doing of something that has been ordered under a temporary writ by another court.

7th. That in the absence of statute, there is no rule of law which permits a court to appoint a receiver when no other relief is asked.

Wherefore, defendant prays the judgment of the court whether it be required to answer said bill.

HOCKER & MARTIN,
Solicitors for the defendant,
Ocklawaha Valley Railroad Company.

STATE OF FLORIDA.

County of Marion:

Before me, the undersigned officer, personally appeared S. P. Hollinrake, who being by me first duly sworn deposes and says that he is Vice President of the defendant Ocklawaha Valley Railroad Company, and that the foregoing demurrer is not interposed for the purpose of delay.

S. P. HOLLINRAKE.

Sworn to and subscribed before me this the 5th day of January, 1918.

MABEL JOHNSON,
Notary Public. [N. P. SEAL.]

I, William Hocker, of counsel for the defendant named in the foregoing demurrer, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WM. HOCKER.

On the 24th of January, 1918, the Court made the following order:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

THE STATE OF FLORIDA, Complainant.

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY and Others, Defendants.

380 Comes now Richard McConathy, Special Master in Chancery in this cause and moves the court to enter an order making to him an allowance for his services in this cause over and above the amount of the taxed cost for taking testimony herein, and directing the payment of said allowance and cost.

Done at Ocala, Fla., this January 24, 1918.

W. S. BULLOCK,
Judge.

To the above order are attached the following papers:

Railroad Commission, State of Florida.
Tallahassee, Florida.

January 28, 1918.

Judge Richard McConathy, Ocala, Florida.

DEAR JUDGE:

I have your letter of the 24th inst. enclosing your application to the court for an order making an allowance for your services as Master in the Ocklawaha Valley Railroad matter.

I shall not oppose your application to the court to allow you a compensation as Master, but I do not feel at liberty to consent to an order in the matter. While I fully recognize your valuable services in the matter, and I am also aware of the investigation of authorities made by you from your report, I doubt the authority of the judge to allow any further compensation than that fixed by the statute, and it is for that reason I prefer the matter be submitted to the Judge, and if he is of the opinion he has the authority, such compensation as fixed by him will be satisfactory to me.

Yours very truly,

DOZIER A. DE VANE,
Counsel.

K. M. C.

381 In the Circuit Court of the Fifth Judicial Circuit of Florida,
Marion County, in Chancery Sitting.

STATE OF FLORIDA, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY et al., Defendants.

The parties hereto will take notice that on January 29th, 1918, at 10 o'clock A. M., or as soon thereafter as he can be heard, the undersigned will move the court at the court room at Ocala, Florida, to pass upon the motion entered herein on January 30th, 1918, to fix and order payment of his compensation as Special Master in this cause.

RICHARD McCONATHY.

To Mr. D. A. De Vane, Attorney for Complainant, Messrs. Hocker & Martin, Attys. for Ocklawaha Valley Railroad Co.

Service accepted January 28th, 1918.

HOCKER & MARTIN.

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

THE STATE OF FLORIDA, Complainant,

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY et al., Defendants.

STATE OF FLORIDA,

Marion County, ss:

382 Affiant, R. McConathy, states that he was advised on December 17, 1918, of his appointment in this cause as special Master to take the testimony and report findings of law and facts; that he immediately gave notice of his sitting on January 21st, and on that day took the testimony covering 97 pages of typewritten matter and on the next day heard argument. On December 31st, he ruled on the exceptions to the draft of the report and filed the report. As soon as he was advised of his appointment, he was also advised that the objections to the appointment of a receiver were principally two-fold; 1st, that no statutory authority existed for same; and second, that the road was being operated at a loss, and would not pay for its expenses if in the hands of a receiver.

Since an early report was ordered by the court, I did not wait for the coming in of the testimony to examine the questions of law involved, but proceeded to do so at once. Possibly not a day passed from the time I was informed of the appointment until my report was filed, that I did not devote some time to hunting the au-

thorities, especially on the 2nd point, and found it difficult to find, *this* after considerable search I found what I thought was sufficient to justify my conclusions.

Considering the importance of the case, involving new questions in this state, and the compensation paid to the profession for such work, I believe an allowance of \$100 as asked for in my motion, would be reasonable.

R. McCONATHY.

Subscribed and sworn to before me this January 30th, 1918.

W. S. BULLOCK,
Judge.

On February 9th, 1919, the Master filed the following affidavits:

In the Circuit Court of the Fifth Judicial Circuit in and for Marion County, Fla. In Chancery.

STATE OF FLORIDA

VS.

OCKLAWAHA VALLEY RAILROAD CO.

383 STATE OF FLORIDA,
Marion County:

Affiant, H. M. Hampton, states that he resides in Ocala, Fla., is an attorney at law, and has practiced in the state and Federal courts for 15 years last past, that he is a member of the firm of Hampton & Trantham, who represented the Citizens and other interested shippers in the matter of the closing down of operations by the defendant railroad company, and also on the application by the state for the appointment of a receiver; that affiant is familiar with the contents of the record in this case and of the services rendered by Richard McConathy as special master therein, that in his judgment the sum of \$100.00 would be a reasonable amount to allow said master for his services over and above the taxed costs filed with the report.

H. M. HAMPTON.

Sworn to and subscribed before me on this the 8th day of February, 1918.

[N. P. SEAL.]

JUSTINE RHODY,
Notary Public, State of Florida at Large.

In the Circuit Court of the Fifth Judicial Circuit in and for Marion County, Florida. In Chancery.

STATE OF FLORIDA

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY.

STATE OF FLORIDA,

Marion County:

Affiant, William Hocker, states that he is a member of the firm of Hocker & Martin, attorneys at law at Ocala, Fla., who represented the defendant, Ocklawaha Valley Railroad Co., in 384 the above entitled suit on the application of complainant for the appointment of a receiver; that affiant has practiced law in the State and Federal courts of Florida 20 years last past; that he is familiar with this record and the services rendered by Richard McConathy as special master in said cause, and that in the opinion of the affiant the sum of \$100.00 would be a reasonable compensation for his services over and above the taxed costs accompanying said report.

WM. HOCKER.

Subscribed and sworn to before me on this 8th day of February, 1918.

[N. P. SEAL.]

MABEL JOHNSON,

Notary Public.

On February 11th, 1919, the court entered the following order.

In the Circuit Court of the Fifth Judicial Circuit of the State of Florida, Marion County. In Chancery.

THE STATE OF FLORIDA

VS.

OCKLAWAHA VALLEY RAILROAD COMPANY et al.

This cause came on to be heard on motion of the Master in Chancery for the allowance of a compensation and for the taxing of the same, the present solicitor for the Railroad Commissioners is of the opinion that only the stated fees as found in the fee bill is allowable, General Statutes of Fla., Sec. 1894, and the Rules of Practice in Suits in Equity govern. Rule 74 allows the court to fix whatever fee is reasonable where none is provided.

If only the fee bill is allowable, then no matter how urgent the matter may be, how much the people are interested and 385 how much the Judge may be engaged, as in this case in the midst of a term of the circuit court, then he cannot get the

benefit of attorneys of experience and learned in the law to accept the office of a Master in Chancery to assist in the speedy disposition of the case, however intricate it may be, and however much the people may be inconvenienced by the delay. I do not believe that to be the intent of the law. In this application attorneys of fifteen and twenty years' experience at the bar have examined the record and are familiar with the facts, have testified that a reasonable sum would be one hundred dollars, in addition to the taxed cost, to be allowed the master. It is considered and ordered that the master be allowed as compensation the sum of One Hundred Dollars in addition to the taxed cost in this case for his services as Master to be paid by the Railroad Commissioners of the State of Florida.

Done at Chambers in Ocala, Florida, Feb'y 9th, 1918.

W. S. BULLOCK,

Judge.

On March 4th, 1918, the Master filed the following bill:

The State of Florida to R. McConathy, Special Master, De.

1917.		
Dec.	4 days—\$8.00; 14 filings, 70c; 12 entries, 72c.....	9.42
	2 notices, 50; Drawing report, \$2.75.....	3.25
	Testimony 26325 words	64.00
1819.		76.67
Feb.	Allowance per order court	100.00
		<hr/> \$176.67

vs. Ocklawaha Valley Railroad Co. et al., Marion County.

Paid per warrant #4503, dated Feb. 1, 1918.

R. MCCONATHY,

Special Master.

On May 11th, 1918, the defendant filed the following paper:

In the Circuit Court of Marion County, Florida.

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STATE OF FLORIDA, Complainant.

vs.

OCKLAHAHA VALLEY RAILROAD COMPANY, a Corporation.
Defendant.

Notice is hereby given that the above styled cause will be called up before the Judge of the above styled court at Ocala, Florida, or wherever the said Judge may then be, for final hearing, on Saturday, the 11th day of May, 1918, at the hour of nine o'clock A. M., or as soon thereafter as counsel can be heard.

HOCKER & MARTIN.

Solicitors for the Defendant.

To the above are attached:

Railroad Commission, State of Florida, Tallahassee, Fla.

May 10, 1918.

Hocker & Martin,
Ocala, Fla.

GENTLEMEN:

I am just in receipt of your favor of the 2nd inst, enclosing notice in State vs. Ocklawaha Valley Railroad Company.

I returned yesterday afternoon from New Orleans where I have been for the past week before the Interstate Commerce Commission examiner. It is impossible for me to go to Ocala for the hearing tomorrow. I therefore wired you today as follows:

"Impossible to be in Ocala, Saturday. Please continue hearing another date. Writing."

I will take the matter up with you at such further date as you desire. If there is no reason for a hurry in the matter, I would like for you to set the case for argument either on June 1st, June 3d or June 6th. I have to be in Tampa on the 4th, and do not know anything that will necessitate my going down there before that time, and as I will be very busy the balance of this month, it would be a great convenience to me to take care of this matter on my trip to Tampa.

Yours very truly,

DOZIER A. DE VANE.

Tallahassee, Fla., May 10.

Hocker & Martin,
Ocala, Fla.:

Impossible to be in Ocala Saturday. Please continue hearing another date. Writing.

DOZIER A. DE VANE,

Counsel.

Railroad Commission, State of Florida.

Tallahassee, May 11, 1918.

Messrs. Hocker & Martin,
Ocala, Fla.

GENTLEMEN:

I am directed to acknowledge receipt of your letter of May 3d, enclosing notice setting case of State vs. O. V. R. R. Co. for final hearing before Judge Bullock on the 11th inst., and to say that Mr. De Vane, counsel, is at present in New Orleans, attending a hearing before an examiner in the Interstate Commerce Commission in a live stock rate case.

We do not know definitely when Mr. De Vane will return, but your letter will be called to his attention as soon as he gets back to the office.

Yours very truly,

LEWIS G. THOMPSON,
Secretary.

On May 11th, 1918, the Court entered the following order:

388 In the Circuit Court of Marion County, Fifth Judicial Circuit of Florida. In Chancery.

STATE OF FLORIDA, Complainant,

vs.

OKLAWAHA VALLEY RAILROAD, Defendant.

Order.

This cause coming on for final hearing upon the testimony taken and the findings made by Richard McConathy, Esquire, Special Master, and upon the complainant's exceptions to said findings; and it appearing that the Florida Railroad Commission has had due notice of this application and the court being advised in the premises

It is thereupon ordered, adjudged and decreed that the exception filed by the complainant to the report of said Master be and the same are hereby overruled, and

It is further ordered, adjudged and decreed that there is no equity in the complainant's bill, and this cause is hereby dismissed at the cost of the complainant.

Done and ordered at Chambers at Ocala, Florida, this 11th day of May, 1918.

W. S. BULLOCK,
Judge.

389 STATE OF FLORIDA,
County of Marion:

I, P. H. Nugent, Clerk of the Circuit Court in and for the County of Marion, State of Florida, do hereby certify that the foregoing page numbered from One to Thirty-four inclusive, contain a correct transcript of the record of all of the proceedings, except the evidence, in the case of State of Florida, complainant, vs. Oklawaha Valley Railroad Company, defendant, pending in the Circuit Court of the Fifth Judicial Circuit of Florida, in and for Marion County, in Chancery, as appears upon the records and files in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this the 2nd day of July, 1919.

P. H. NUGENT,
Clerk of Circuit Court in and for the County of Marion, State of Florida. [SEAL]

In the Supreme Court of Florida.

STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS, etc., Plaintiff,

vs.

W. S. BULLOCK, Judge, etc., Defendant.

The undersigned as counsel for the defendant in the above styled cause, hereby consent that the certified copy of Special Master's report of sale in the case of Wm. S. Hood, Trustee, vs. Oklawaha Valley Railroad Company, pending in the Circuit Court of Marion County, Florida, in Chancery, shall be added to and become a part of the transcript of the record of the proceedings in said cause heretofore filed in this court, and that an order may be entered amending said report by the addition of said copy of Special Master's report, without notice to the defendant.

This July 12th, 1919.

HOCKER & MARTIN,
Att Counsel for the Defendant,
W. S. Bullock, Judge, etc.

On April 22nd, 1919, the Special Master in Chancery filed the following report:

In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

vs.

OKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendant.

I, the undersigned, herein appointed Special Master in Chancery by decree of Court of date December 24th, 1917, to execute said decree, have the honor to report my proceedings thereunder as follows:

Pursuant to the decrees herein, I did cause the property described therein to be advertised for sale on the 4th day of February, 1918, and on the 4th day of November, 1918, which said advertisements were published in the Ocala Star, a newspaper published in Marion County, Florida, and in the Palatka News, and Times-Herald, newspapers published in Putnam County, Florida. The bills for such publications have been duly paid and are herewith attached. Said proposed sales having been ordered to be continued by order of court herein, same were not held.

That thereafter, this court having entered another order herein, that the sale of said property proceed as provided in said decree of date December 24th, 1917; that pursuant to the decrees of court herein, and after due publication of notice of the time and place of said sale, as required by the order of court herein, copies of said

392 notice and proofs of publication being hereunto attached and made a part of this report, I did offer for sale at public outcry and auction to the highest and best bidder, the property described in the decree, of date December 24th, 1917, in front of the south door of the Court House in Marion County, Florida, on the 3d day of February, 1919, the same being a legal sales day, at the hour of eleven o'clock A. M., legal time, at which said time and place the following proceedings were had:

I did offer first all of the property described and included in said final decree, of date December 24th, 1917, said property to be held used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, but received no bid or offering for said property as aforesaid.

I then immediately offered all of the aforesaid property for sale for the purpose of and with the privilege on the part of the purchaser, of dismantling the same; that William S. Hood, Trustee, having bid the sum of Two Hundred and Twenty-five Thousand (\$225,000.00) Dollars for the aforesaid property for the purpose of and with the privilege of dismantling the same, said bid being the only and the highest and best bid therefor, I did accept the said bid and thereupon caused the said William S. Hood, Trustee, to deposit with me as Special Master, the sum of Twenty Thousand (\$20,000.00) Dollars in cash to be applied as may be needed in the payment of costs and taxes herein.

That the amount received from said sale of said property as aforesaid was \$20,000.00 Dollars.

I have paid the following fees:

Palatka News	\$40.00	February 7th, 1918.
Ocala Star	28.00	February 7th, 1918
Times-Herald	30.00	
Ocala Star	30.00	
Complainant's solicitors	12,500.00	
Special Master	2,274.50	
Revenue Stamps	225.00	
Court costs		
Trustee's fees	1,000.00	

Total 16,127.50

Leaving a balance of \$3,872.50

393 That the master is informed and advised that the Comptroller of the State of Florida is claiming for and on behalf of the State of Florida, and Marion and Putnam Counties, \$6,624.58, for and on account of taxes claimed to be due and unpaid to said state and counties for the year 1917, which I have not paid because I found them irregular.

Hereunto attached are receipts and disbursements and payments herein mentioned which are hereby filed and made a part of this report.

The Master prays such further instructions as the Court may deem necessary.

Respectfully submitted,

F. R. HOCKER,
Special Master in Chancery.

Affidavit.

STATE OF FLORIDA,

County of Putnam, ss:

Personally appeared before me, a notary public in and for the State of Florida and county of Putnam H. A. B. McKenzie who being first duly sworn deposes and says that he is publisher of the Times-Herald a newspaper published weekly in the City of Palatka, in said County and State; that the notice, a copy of which is hereunto attached, has been published in The Times-Herald for six (6) weeks as follows: From December 27, 1918, to January 31, 1919, (inclusive).

H. A. B. MCKENZIE,
Pub. The Times-Herald.

Sworn to and subscribed before me this the 1st day of February, A. D. 1919.

[N. P. SEAL.]

J. N. BLACKWELL,
Notary Public.

My commission expires September 8, 1919.

Copy of Advertisement.

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Notice of Master's Sale.

Notice is hereby given that under and by virtue of a final decree entered in the circuit court of Marion County, Florida, in chancery, dated December 24th, 1917, wherein William S. Hood, as Trustee, was complainant, and Ocklawaha Valley Railroad Company was defendant, I, the undersigned special Master in Chancery in the manner hereafter stated, on

Monday, the third day of February, 1919, between the hours of eleven o'clock A. M. and two o'clock P. M. will offer for sale and sell to the highest and best bidder for cash in front of the south door of the Marion County Court House in Ocala, Florida, the property described in said decree, to-wit:

The line of railroad extending from the terminus of the company in the city of Ocala, a distance of six miles to a point known as "Silver Springs" in the County of Marion, as described and defined in and subject to the terms of that certain lease and agreement dated December 14th, 1909, between the Seaboard Air Line Railroad Company and the Ocala Northern Railroad Company.

The line of railroad extending from Silver Springs to Fort McCoy in the county of Marion, a distance of 12.3 miles; from Fort McCoy to the city of Palatka, in Putnam County, a distance of 32.5 miles,

passing through the towns of Bay Lake and Orange Springs, in Marion County, and passing through Marion County into Putnam County at or near Orange Creek, and thence in Putnam County by way of the towns of Kenwood, Rodman and Kenilworth, to the city of Palatka, and all extensions thereof.

The line of railroad extending from the terminus of the company's line in the city of Palatka a distance of one and one-half miles, to the terminus of the company's line in the said city of Palatka leased from the Georgia Southern & Florida Railroad Company.

395 The right of way of the company, one hundred feet in width, from Silver Springs to the city of Palatka.

All and singular the franchises, rights, privileges and immunities now or hereafter appendant or appurtenant to or used in connection with the said lines of the company and any and all extensions and branches thereof.

Also, that certain lot or parcel of land in Ocala, Florida, in Block 64, Old Survey, of the City of Ocala, on which are now located the general offices of the defendant Ocklawaha Valley Railroad Company, which lot or parcel of land is more particularly described in that certain deed of date the 30th day of April, 1915, signed by R. L. Milton, as special master, as is found of record in the public records of Marion County, Florida, in deed book 161, page 357, which said lot is also described in that deed of date November 1st, 1911, signed by E. P. Rentz and Kate W. Rentz, to the Ocala Northern Railroad Company, as found of record in deed book 150 at page 485 of the public records of Marion County, Florida.

Also, all other property included in that certain trust deed made by Ocklawaha Valley Railroad Company, to W. S. Hood, Trustee, recorded in the public records of Marion County, Florida, in mortgage book 49 at pages 1 to 32, and recorded in the public records of Putnam County, Florida in mortgage book 7 at page 182 et seq.

At said sale I shall first offer all the property above described to be held, used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, and if as much as Two Hundred Thousand (\$200,000) Dollars is bid under such first offering, the same will be knocked down to the highest bidder at such offering. If as much as Two Hundred Thousand (\$200,000) Dollars is not bid for said property to be held, used and operated as a common carrier as aforesaid, then I shall offer all of said property for the purpose of and with the privilege on the
396 part of the purchaser of dismantling the same; and in the event the bid received under the second offering herein provided for shall not exceed by One Hundred Thousand Dollars the highest bid received under the first offering as above stated, then the property will be declared sold to the bidder under the first offering above mentioned, otherwise the same will be knocked down to the highest bidder under the second offering.

In compliance with the terms of said final decree the complainant in said cause or Assets Realization Company will be entitled to use in bidding all or any part of the indebtedness mentioned in said

decree and have his or its bid credited on such indebtedness, if said bid be accepted, provided however, that the highest bidder under the second offering if his bid exceeds by One Hundred Thousand Dollars the highest bid made under the first offering, or if no bid is made under the first offering shall be required by the master to deposit with the master Twenty Thousand (\$20,000) Dollars in cash upon his bid to be applied as may be needed in the payment of costs and taxes and provided also, in the event the highest bid made under the second offering shall not exceed by One Hundred Thousand (\$100,000) Dollars the highest bid made under the first offering herein provided for the successful bidder shall immediately deposit with the special master in cash the full amount of his bid. Reference is hereby made to said final decree for further particulars.

The Court in and by said decree has reserved the right to reject any and all bids made.

F. R. HOCKER,
Special Master.

HOCKER & MARTIN,
Complainant's Solicitors.

397 *Affidavit of Publisher.*

STATE OF FLORIDA,
Marion County, ss:

I, P. V. Leavengood, certify that I am one of the publishers of The Ocala Weekly Star, a newspaper published in the aforesaid county, and that the advertisement — William S. Hood, Trustee, vs. Oeklawaha Valley Railroad Company, a copy of which is hereto attached, was published in said paper in its issues of Jan. 3, 10, 17, 24, 31, 1919.

P. V. LEAVENGOOD.

Subscribed and sworn to before me this 1st day of Feb., 1919.

R. N. DOSH,
[N. P. SEAL.] *Notary Public.*

398 *Notice of Master's Sale.*

Notice is hereby given that under and by virtue of a final decree entered in the circuit court of Marion County, Florida, in chancery, dated December 24th, 1917, wherein William S. Hood, as Trustee, was complainant, and Oeklawaha Valley Railroad Company was defendant, I, the undersigned special Master in Chancery in the manner hereinafter stated on

Monday, the third day of February, 1919, between the hours of eleven o'clock A. M. and two o'clock P. M. will offer for sale and sell to the highest and best bidder for cash in front of the south door

of the Marion County Court House in Ocala, Florida, the property described in said decree, to-wit:

The line of railroad extending from the terminus of the company in the city of Ocala, a distance of six miles to a point known as "Silver Springs" in the County of Marion, as described and defined in and subject to the terms of that certain lease and agreement dated December 14th, 1909, between the Seaboard Air Line Railroad Company and the Ocala Northern Railroad Company.

The line of railroad extending from Silver Springs to Fort McCoy, in the county of Marion, a distance of 12.3 miles; from Fort McCoy to the city of Palatka, in Putnam County, a distance of 32.5 miles, passing through the towns of Bay Lake and Orange Springs, in Marion County, and passing through Marion County into Putnam County at or near Orange Creek, and thence in Putnam County by way of the towns of Kenwood, Rodman and Kenilworth, to the city of Palatka, and all extensions thereof.

The line of railroad extending from the terminus of the company's line in the city of Palatka, a distance of one and one-half miles, to the terminus of the company's line in the said city of Palatka, leased from the Georgia Southern & Florida Railroad Company.

339 The right of way of the company, one hundred feet in width, from Silver Springs to the city of Palatka.

All and singular the franchises, rights, privileges and immunities now or hereafter appendant or appurtenant to or used in connection with the said lines of the company and any and all extensions and branches thereof.

Also, that certain lot or parcel of land in Ocala, Florida, in Block 64, Old Survey, of the City of Ocala, on which are now located the general offices of the defendant Ocklawaha Valley Railroad Company, which lot or parcel of land is more particularly described in that certain deed of date the 30th day of April, 1915, signed by R. L. Milton, as special master, as is found of record in the public records of Martin County, Florida, in deed book 161, page 357, which said lot is also described in that deed of date November 1st, 1911, signed by E. P. Rentz and Kate W. Rentz, to the Ocala Northern Railroad Company, as found of Record in deed book 150 at page 485 of the public records of Marion County, Florida.

Also, all other property included in that certain trust deed made by Ocklawaha Valley Railroad Company, to W. S. Hood, Trustee, recorded in the public records of Marion County, Florida, in mortgage book 49, at pages 1 to 32, and recorded in the public records of Putnam County, Florida in mortgage book 7 at page 182 et seq.

At said sale I shall first offer all the property above described to be held, used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, and if as much as Two Hundred Thousand (\$200,000) Dollars is bid under such first offering, the same will be knocked down to the highest bidder at such offering. If as much as Two Hundred Thousand (\$200,000) Dollars is not bid for said property to be held, used and operated as a common carrier as aforesaid, then I shall offer

all of said property for the purpose of and with the privilege on the part of the purchaser of dismantling the same; and in the event the bid received under the second offering herein provided for shall not exceed by One Hundred Thousand Dollars the highest bid received under the first offering as above stated, then the property will be declared sold to the bidder under the first offering above mentioned, otherwise the same will be knocked down to the highest bidder under the second offering.

In compliance with the terms of said final decree the complainant in said cause or Assets Realization Company will be entitled to use in bidding all or any part of the indebtedness mentioned in said decree and have his or its bid credited on such indebtedness, if said bid be accepted, provided, however, that the highest bidder under the second offering if his bid exceeds by One Hundred Thousand Dollars the highest bid made under the first offering, or if no bid is made under the first offering shall be required by the master to deposit with the master Twenty Thousand (\$20,000) Dollars in cash upon his bid to be applied as may be needed in the payment of costs and taxes and provided also, in the event the highest bid made under the second offering shall not exceed by One Hundred Thousand (\$100,000) Dollars the highest bid made under the first offering herein provided for the successful bidder shall immediately deposit with the special master in cash the full amount of his bid. Reference is hereby made to said final decree for further particulars.

The Court in and by said decree has reserved the right to reject any and all bids made.

F. R. HOCKER,

Special Master.

HOCKER & MARTIN,

Complainant's Solicitors.

401 Affidavit of Publisher.

STATE OF FLORIDA,

Marion County, ss:

I, P. V. Leavengood, certify that I am one of the publishers of the Ocala Weekly Star, a newspaper published in the aforesaid County, and that the advertisement Notice of Master's Sale, William S. Hood, as Trustee, vs. Oklawaha Valley Railroad Company, a copy of which is hereto attached, was published in said paper in its issues of Oct. 4, 11, 18, 25, 1918.

P. V. LEAVENGOOD.

Subscribed and sworn to before me this 28th day of Oct., 1918.

[N. P. SEAL.]

R. N. DOSH.

402 *Notice of Master's Sale.*

Notice is hereby given that under and by virtue of a final decree entered in the circuit court of Marion County, Florida, in Chancery,

dated December 24th, 1917, wherein William S. Hood, as Trustee, was complainant, and Ocklawaha Valley Railroad Company was defendant, I, the undersigned Special Master in chancery in the manner hereafter stated on Monday November 4th, 1918, between the hours of eleven o'clock A. M. and two o'clock P. M. will offer for sale and sell to the highest and best bidder for cash in front of the south door of the Marion County Court House in Ocala, Florida, the property described in said decree, to-wit:

The line of railroad extending from the terminus of the company in the city of Ocala, a distance of six miles to a point known as "Silver Springs" in the county of Marion, as described and defined in and subject to the terms of that certain lease and agreement, dated December 14th, 1909, between the Seaboard Air Line Railroad Company and the Ocala Northern Railroad Company.

The line of railroad extending from Silver Springs to Fort McCoy in the County of Marion, a distance of 12.3 miles; from Fort McCoy to the City of Palatka, in Putnam County, a distance of 32.5 miles, passing through the towns of Bay Lake and Orange Springs, in Marion County, and passing through Marion County into Putnam County at or near Orange Creek, and thence in Putnam County by way of the towns of Kenwood, Rodman and Kenilworth, to the city of Palatka, and all extensions thereof.

The line of railroad extending from the terminus of the company's line in the city of Palatka, a distance of one and one-half miles, to the terminus of the company's line in the city of Palatka, leased from the Georgia Southern & Florida Railroad Company.

403 The right of way of the company, one hundred feet in width, from Silver Springs to the city of Palatka.

All and singular the franchises, rights, privileges and immunities now or hereafter appendant or appurtenant to or used in connection with the said lines of the company and any and all extensions and branches thereof.

Also that certain lot or parcel of land in Ocala, Florida, in Block 64, Old Survey of the City of Ocala, on which said lot are now located the general offices of the defendant Ocklawaha Valley Railroad Company, which lot or parcel of land is more particularly described in that certain deed of date the 30th day of April, 1915, signed by R. L. Milton, as special master, as is found of record in the public records of Marion County, Florida, in deed book 61, page 357, which said lot is also described in that deed of date November 1st, 1911, signed by E. P. Rentz and Kate W. Rentz to the Ocala Northern Railroad Company, as found of record in deed book 150 at page 485 of the public records of Marion County, Florida.

Also all other property included in that certain trust deed made by Ocklawaha Valley Railroad Company to W. S. Hood, trustee, recorded in the public records of Marion County, Florida, in mortgage book 49 at pages 1 to 32, and recorded in the public records of Putnam County, Florida, in Mortgage book 7 at page 182 et seq.

At said sale I shall first offer all the property above described to be held, used and operated as a common carrier of goods and passen-

gers from Silver Springs, Florida, to Palatka, Florida, and if as much as Two Hundred Thousand (\$200,000) Dollars is bid under such first offering, the same will be knocked down to the highest bidder at such offering. If as much as Two Hundred Thousand (\$200,000) Dollars is not bid for said property to be held, used and operated as a common carrier as aforesaid, then I shall offer all of said property for the purpose of and with the privilege on 404 the part of the purchaser of dismantling the same; and in the event the bid received under the second offering herein provided for shall not exceed by One Hundred Thousand Dollars the highest bid received under the first offering as above stated, then the property will be declared sold to the bidder under the first offering above mentioned, otherwise, the same will be knocked down to the highest bidder under the second offering.

In compliance with the terms of said final decree, the complainant in said cause or Assets Realization Company will be entitled to use in bidding all or any part of the indebtedness mentioned in said decree and have his or its bid credited on such indebtedness, if said bid be accepted, provided, however, that the highest bidder under the second offering if his bid exceeds by One Hundred Thousand Dollars the highest bid made under the first offering, or if no bid is made under the first offering shall be required by the master to deposit with the master Twenty Thousand (\$20,000) Dollars in cash upon its bid to be applied as may be needed in the payment of costs and taxes, and provided also, in the event the highest bid made under the second offering shall not exceed by One Hundred Thousand (\$100,000) Dollars the highest bid made under the first offering provided for the successful bidder shall immediately deposit with the special master, in cash, the full amount of his bid. Reference is hereby made to said final decree for further particulars.

The court in and by said decree has reserved the right to reject any and all bids made.

F. R. HOCKER,
Special Master.

HOCKER & MARTIN,
Complainant's Solicitors.

405 *Affidavit.*

STATE OF FLORIDA,
County of Putnam, ss:

Personally appeared before me, a Notary Public in and for the State of Florida, and county of Putnam, H. A. B. McKenzie, who being first duly sworn deposes and says he is publisher of The Times Herald, a newspaper published weekly in the City of Palatka, in said County and State; that the notice a copy of which is herewith attached, has been published in The Times-Herald for five (5) weeks (consecutive) as follows:

From October 4, 1918, to November 1, 1918, (inclusive).

H. A. B. McKENZIE,
Pub. The Times-Herald.

Sworn to and subscribed before me this the 2nd day of November, 1918.

J. N. BLACKWELL,

Notary Public.

[S. P. SEAL.]

My commission expires September 8, 1919.

406

Notice of Master's Sale.

Notice is hereby given that under and by virtue of a final decree entered in the circuit court of Marion County, Florida, in chancery, dated December 24th, 1917, wherein William S. Bood, as Trustee, was complainant, and Ocklawaha Valley Railroad Company was defendant, I, the undersigned special Master in chancery in the manner hereafter stated on Monday, November 4th, 1918, between the hours of eleven o'clock A. M. and two o'clock p. m. will offer for sale and sell to the highest and best bidder for cash in front of the south door of the Marion County Court House in Ocala, Florida, the property described in said decree, to-wit:

The line of railroad extending from the terminus of the company in the city of Ocala, a distance of six miles to a point known as "Silver Springs" in the county of Marion, as described and defined in and subject to the terms of that certain lease and agreement, dated December 14th, 1909, between the Seaboard Air Line Railroad Company and the Ocala Northern Railroad Company.

The line of railroad extending from Silver Springs to Fort McCoy in the County of Marion, a distance of 12.3 miles; from Fort McCoy to the City of Palatka, in Putnam County, a distance of 32.5 miles, passing through the towns of Bay Lake and Orange Springs, in Marion County, and passing through Marion County into Putnam County at or near Orange Creek, and thence in Putnam County by way of the towns of Kenwood, Rodman and Kenilworth, to the city of Palatka, and all extensions thereof.

The line of railroad extending from the terminus of the company's line in the city of Palatka, a distance of one and one-half miles, to the terminus of the company's line in the said city of Palatka, leased from the Georgia Southern & Florida Railroad Company.

407 The right of way of the company, one hundred feet in width, from Silver Springs to the city of Palatka.

All and singular the franchises, rights, privileges and immunities now or hereafter appendant or appurtenant to or used in connection with the said lines of the company and any and all extensions and branches thereof.

Also, that certain lot or parcel of land in Ocala, Florida, in Block 64, Old Survey of the city of Ocala, on which said lot are now located the general offices of the defendant Ocklawaha Valley Railroad Company, which lot or parcel of land is more particularly described in that certain deed of date the 28th day of April, 1915, signed by R. L. Milton, as special master, as is found of record in the public records of Marion County, Florida, in deed book 161, page 357, which said lot is also described in that deed of date No

umber 1st, 1911, signed by E. P. Rentz and Kate W. Rentz to the Ocala Northern Railroad Company, as found of record in deed book 159 at page 185 of the public records of Marion County, Florida.

Also all other property included in that certain trust deed made by Oklawaha Valley Railroad Company, to W. S. Hood, trustee, recorded in the public records of Marion County, Florida, in mortgage book 49 at pages 1 to 32, and recorded in the public records of Putnam County, Florida, in mortgage book 7 at page 182 et seq.

At said sale I shall first offer all the property above described to be held, used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, and if as much as Two Hundred Thousand (\$200,000) Dollars is bid under such first offering, the same will be knocked down to the highest bidder at such offering. If as much as Two Hundred Thousand (\$200,000) Dollars is not bid for said property to be held, used and operated as a common carrier as aforesaid, then I shall offer all of said property for the purpose of and with the privilege on the 408 part of the purchaser of dismantling the same; and in the event the bid received under the second offering herein provided for shall not exceed by One Hundred Thousand Dollars the highest bid received under the first offering as above stated, then the property will be declared sold to the bidder under the first offering above mentioned, otherwise, the same will be knocked down to the highest bidder under the second offering.

In compliance with the terms of said final decree, the complainant in said cause or Assets Realization Company will be entitled to use in bidding all or any part of the indebtedness mentioned in said decree and have his or its bid credited on such indebtedness, if said bid be accepted, provided, however, that the highest bidder under the second offering if his bid exceeds by One Hundred Thousand Dollars the highest bid made under the first offering, or if no bid is made under the first offering shall be required by the master to deposit with the master Twenty Thousand (\$20,000) Dollars in cash upon his bid to be applied as may be needed in the payment of costs and taxes, and provided also, in the event the highest bid made under the second offering shall not exceed by One Hundred Thousand (\$100,000) Dollars the highest bid made under the first offering provided for the successful bidder shall immediately deposit with the special master, in cash, the full amount of his bid. Reference is hereby made to said final decree for further particulars.

The court in and by said decree has reserved the right to reject any and all bids made.

F. R. HOCKER,
Special Master.

HOCKER & MARTIN,
Complainant's Solicitors.

409

Affidavit.

STATE OF FLORIDA,
County of Putnam, ss:

Personally appeared before me, a notary public in and for the State of Florida and County of Putnam, H. A. B. McKenzie, who being first duly sworn, deposes and says he is publisher of The Times-Herald, a newspaper published weekly in the City of Palatka, in said County and State; that the notice, a copy of which is hereto attached, has been published in The Times Herald for four (4) weeks (consecutive)—as follows:

From October 4, 1918 to October 25, 1918 (inclusive).

H. A. B. McKENZIE,

Pub. The Times-Herald.

Sworn to and subscribed before me this the 26th day of October, A. D. 1918.

J. N. BLACKWELL,

Notary Public.

[N. P. SEAL.]

My commission expires Sept. 8, 1919.

410

Notice of Master's Sale.

Notice is hereby given that under and by virtue of a final decree entered in the circuit court of Marion County, Florida, in chancery, dated December 24th, 1917, wherein William S. Hoed, as Trustee, was complainant, and Ocklawaha Valley Railroad Company was defendant, I, the undersigned special Master in chancery in the manner hereafter stated on Monday, November 4th, 1918, between the hours of eleven o'clock A. M. and two o'clock p. m. will offer for sale and sell to the highest and best bidder for cash in front of the south door of the Marion County Court House in Ocala, Florida, the property described in said decree, to-wit:

The line of railroad extending from the terminus of the company in the city of Ocala, a distance of six miles to a point known as "Silver Springs" in the county of Marion, as described and defined in and subject to the terms of that certain lease and agreement, dated December 14th, 1909, between the Seaboard Air Line Railroad Company and the Ocala Northern Railroad Company.

The line of railroad extending from Silver Springs to Fort McCoy in the County of Marion, a distance of 12.3 miles; from Fort McCoy to the City of Palatka, in Putnam County, a distance of 32.5 miles, passing through the towns of Bay Lake and Orange Springs, in Marion County and passing through Marion County into Putnam County at or near Orange Creek, and thence in Putnam County by way of the towns of Kenwood, Rehman and Kenilworth, to the city of Palatka, and all extensions thereof.

The line of railroad extending from the terminus of the company's line in the city of Palatka, a distance of one and one-half miles, to the

terminus of the company's line in the said city of Palatka, leased from the Georgia Southern & Florida Railroad Company.

(11) The right of way of the company, one hundred feet in width, from Silver Springs to the city of Palatka.

All and singular the franchises, rights, privileges and immunities now or hereafter appendant or appurtenant to or used in connection with the said lines of the company, and all extensions and branches thereof.

Also, that certain lot or parcel of land in Ocala, Florida, in Block 64, Old Survey of the city of Ocala, on which said lot are now located the general offices of the defendant Ocklawaha Valley Railroad Company, which lot or parcel of land is more particularly described in that certain deed of date the 29th day of April, 1915, signed by R. L. Milton, as special master, as is found of record in the public records of Marion County, Florida, in deed book 161, page 357, which said lot is also described in that deed of date November 1st, 1911, signed by E. P. Rentz and Kate W. Rentz to the Ocala Northern Railroad Company, as found of record in deed book 150 at page 485 of the public records of Marion County, Florida.

Also all other property included in that certain trust deed made by Ocklawaha Valley Railroad Company, to W. S. Hood, trustee, recorded in the public records of Marion County, Florida, in mortgage book 49 at pages 1 to 32, and recorded in the public records of Putnam County, Florida, in mortgage book 7 at page 182 et seq.

At said sale I shall first offer all the property above described to be held, used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, and if as much as Two Hundred Thousand (\$200,000) Dollars is bid under such first offering, the same will be knocked down to the highest bidder at such offering. If as much as Two Hundred Thousand (\$200,000) Dollars is not bid for said property to be held, used and operated as a common carrier as aforesaid, then I shall offer all of said property

for the purpose of and with the privilege on the part of the purchaser of dismantling the same; and in the event the bid received under the second offering herein provided for shall not exceed by One Hundred Thousand Dollars the highest bid received under the first offering as above stated, then the property will be declared sold to the bidder under the first offering, as above mentioned, otherwise, the same will be knocked down to the highest bidder under the second offering.

In compliance with the terms of said final decree, the complainant in said cause or Assets Realization Company will be entitled to use in bidding all or any part of the indebtedness mentioned in said decree and have his or its bid credited on such indebtedness, if said bid be accepted, provided, however, that the highest bidder under the second offering if his bid exceeds by One Hundred Thousand Dollars the highest bid made under the first offering, or if no bid is made under the first offering shall be required by the master to deposit with the master Twenty Thousand (\$20,000) Dollars in cash upon his bid to be applied as may be needed in the payment of costs and taxes, and provided also, in the event the highest bid made under the second

offering shall not exceed by One Hundred Thousand (\$100,000) Dollars the highest bid made under the first offering provided for the successful bidder shall immediately deposit with the special master, in cash, the full amount of his bid. Reference is hereby made to said final decree for further particulars.

The court in and by said decree has reserved the right to reject any and all bids made.

F. R. HOCKER,
Special Master.

HOCKER & MARTIN,
Complainant's Solicitors.

413 Rec'd of F. R. Hocker, Special Master, \$12,500.00 less allowed solrs. for comp't. in Hood, Trustee, v. Oklawaha Valley Ry. et al.

ELDON BISBEE,
HOCKER & MARTIN,
Att'ys for Comp't.

Received of F. R. Hocker, Special Master, \$1,000.00, Trustee's fee allowed in Hood, Trustee, vs. Oklawaha Valley Ry.

ELDON BISBEE,
Sol'r for W. S. Hood, Trustee.

414 I, P. H. Nugent, Clerk of the Circuit Court of Marion County, Florida, hereby certify that the foregoing is a true and correct copy of the Special Master's report of sale filed April 22nd, 1919, in the suit pending in said court in which William S. Hood, Trustee, was complainant, and the Oklawaha Valley Railroad Company was defendant, and the State of Florida intervenor, and that the same was by inadvertence omitted from the transcript of the record of the proceedings in said case, heretofore prepared by me, at the request of Dorier A. De Vane, counsel for the Florida Railroad Commission.

Witness my hand and official seal at Ocala, Florida, this July 12, 1919.

[Seal of Circuit Court.]

P. H. NUGENT,
Clerk Circuit Court of Marion County, Florida.

415 To the Honorable James T. Willis, Judge of the Circuit Court of the Eighth Judicial Circuit of the State of Florida in and for Putnam County, in Chancery:

The State of Florida, complainant by D. C. McMullen, Special Counsel for the Railroad Commission of the State of Florida, is then directed to sue in its behalf, brings this its bill of complaint against Oklawaha Valley Railroad Company, a corporation organized and existing under the laws of the State of Florida, defendant and thereupon your order complains and says:

First. Your orator respectfully represents unto your honor that the defendant is a railroad corporation organized and existing under the laws of the State of Florida, and enjoying all the rights, privileges and benefits thereof. That it owns a line of railroad from Silver Springs in the County of Marion to point of junction with Georgia Southern & Florida Railroad near Palatka, in the County of Putnam, in the State of Florida, the said line so owned being forty-five and one-half miles long. That the defendant has and usually keeps an office in Palatka, in the County of Putnam, for the transaction of its customary business.

Second. Your orator further represents unto your honor that along the line of road operated by the defendant are the following places: Ocala, Silver Springs, Oak Junction, Barbours, Oakey, Fort McCoy, Bay Lake, Orange Springs, Ketoonoo, Rodman, Suckley and Palatka. That there are a large number of people, the approximate number your orator has no convenient means of ascertaining, who are dependent entirely upon the defendant for transportation services, there being no other railroad or common carrier that could be conveniently reached by the people residing in the territory served by the defendant. That the patrons of the defendant are engaged in agriculture, horticulture, saw-milling, logging, shipping, cross-ties, manufacturing and shipping naval stores, mercantile business, and various and sundry other pursuits.

Third. That the defendant has notified its patrons and connecting carriers that it will not operate its trains after November 30th, 1917, and your orator is informed and believes, and upon information and belief alleges the truth to be that it is the intention of the defendant to dismantle its road, take up its track and entirely abandon the discharge of its duties as a common carrier. That under Section 2906 of the General Statutes of the State of Florida, as amended in 1913, it is the duty of the defendant to operate over every part of its line not less than one passenger and one freight train each way daily except Sunday, unless the Railroad Commissioners shall determine that the public need does not require a greater service than one mixed train each way daily except Sunday; and by and with the consent of the Railroad Commissioners the defendant has been operating one mixed train each way daily, except Sunday over every part of its line.

Fourth. Your orator further represents that it has been informed and believes, and upon information and belief alleges the truth to be that interests allied with the defendant or the persons or corporations owning the defendant, have during the past few years sold many tracts of land to people from various parts of the United States along its line of railroad belonging to the defendant, and that these tracts of land could not have been sold but for the existence of the railroad belonging to defendant; and that to dismantle and remove the railroad would be a fraud upon the purchasers of these lands.

Fifth. Your orator further represents unto your honor that it would be ruinous to the industries and to the people along the line

of defendant's road for it to discontinue operating its trains; that the sworn monthly reports of the defendant to the Railroad Commissioners of Florida, show a substantial increase in business each month this year since the month of April, over the business of the corresponding months of last year, and that the report for the month of October shows freight earning for that month almost double the freight earnings of the preceding October.

Sixth. Your orator further represents that the Traffic Officer of the Emergency Fleet Corporation of the United States has telegraphed to the Railroad Commissioners of the State of Florida about the proposed discontinuance of service by defendant, alleging that there was a considerable amount of government material being secured from along the line of defendant's road, and that a discontinuance of service now would seriously handicap the movement of materials used in the construction of ships for the United States government.

For as much as your orator is without remedy in the premises except in a Court of equity, to the end that the defendant shall true answer make to each and every of the foregoing allegations, but not under oath, answer under oath being hereby waived, and that the defendant, its Officers, Agents and employees be enjoined and restrained from discontinuing the service they are now rendering the patrons, to-wit, operating one mixed train each way daily except Sunday over every part of its line, and that it be enjoined and required by order of this honorable Court to continue to discharge its duties to the public as a common carrier in accordance with the statutes of the State of Florida in such cases made and provided; that it be enjoined and restrained from taking up or removing any of its rail or tract, and that upon a final hearing the injunction issued shall be made permanent; and for such other and further relief in the premises as to your orator shall seem meet and to equity doth appertain.

And may it please your honor to grant unto your orator the State's most gracious writ of subpoena directed to the defendant, the Oklawaha Valley Railroad Company, conditioned in accordance with the rules and practice of this Honorable Court, and your orator will ever pray.

D. C. McMULLEN,

Solicitor for Complainant.

STATE OF FLORIDA.

County of Leon:

Before the undersigned authority personally appeared R. Hudson Burr, who first being duly sworn deposes and says that he is Chairman of the Railroad Commissioners of the State of Florida, that he has heard the foregoing bill read, and that the allegations contained therein are true, except such as are stated upon information and belief and these he is informed and believes to be true.

R. HUDSON BURR,

Chairman.

Subscribed and sworn to before me this 24th day of November, A. D. 1917.

LOUIS G. THOMPSON,
Notary Public.

My commission expires April 19, 1919.

[NOTARIAL SEAL.]

(Endorsements.)

1465.

(In the Circuit Court of the Eighth Judicial Circuit of the State of Florida, in and for Putnam County. In Chancery.) State of Florida, Complainant, vs. Ocklawaha Valley Railroad Company, Defendant. Filed Nov. 26, 1917. J. T. Wills, Judge. Bill for Injunction. D. C. McMullen, Solicitor for Complainant.

419 STATE OF FLORIDA,
County of Putnam:

I, R. J. Hancock, Clerk of the Circuit Court in and for the Eighth Judicial Circuit, Putnam County, Florida, hereby certify, that the above and foregoing is a true and correct copy of what it purports to be from the face thereof and as the same appears of file in this office.

In testimony whereof, I hereunto set my hand and official Seal, this 16 day of June, A. D. 1919.

[SEAL.] R. J. HANCOCK,
Clerk of the Circuit Court.

In the Circuit Court of the Eighth Judicial Circuit of Florida in and for Putnam County. In Chancery.

STATE OF FLORIDA, Complainant,

vs.

OCKLAHAHA VALLEY RAILROAD COMPANY, a Corporation,
Defendant.

Answer of the Defendant.

This defendant now and at all times hereafter saving unto itself all benefit of exception that may be taken to the errors and imperfections in the said bill contained, for answer thereto answering says:

That the defendant admits the allegations contained in the first and second paragraphs of complainant's bill.

This defendant admits that it has notified its patrons and connecting carriers that it will not operate its trains after November 20th, 1917, but this defendant denies that any resolution has ever been passed by its stockholders or directors with respect to dismantling its said road, that no orders have been given for this purpose

and no contracts have been made with this end in view, and that as this defendant is a corporation, its corporate intent has never been expressed with respect to dismantling said road, but this defendant admits that some persons representing the creditors of this defendant have expressed a desire to dismantle said road but by what method the said creditors propose to dismantle the railroad of this defendant or through what judicial proceedings they propose to accomplish same, this defendant is not advised, nor is this defendant advised that the said creditors will be able to dismantle the said railroad. That one of the persons representing the principal creditor of this defendant has stated that the French Government was very anxious to purchase the rail in the railroad track of this defendant for use in conducting the present war, but that if the creditor represented by such person has taken any legal steps to acquire said rail from this defendant or to bring any judicial proceeding for the purpose of dismantling the railroad of this defendant, this defendant is not advised.

This defendant denies all the allegations of the fourth paragraph of the complainant's bill.

This defendant admits that it would probably injure some of the people along the line of the defendant's road for it to discontinue operating trains and admits that recent monthly reports filed by this defendant with the Florida Railroad Commission show some increase in business, and that its freight earnings for the month of October, 1917, were about one-third more than they were during October, 1916, but the increase for the said Month last mentioned was

421 due principally to the hauling of a lot of road material for the construction of a public road between Palatka and Orange Springs, and the increase in freight has only occurred since April, 1917, and is due to the rise in the market value of lumber brought on by the purchase by the Government of large quantities of lumber which circumstances has made marketable some of the remaining timber in the territory traversed by this line, but that practically all of the timber along the defendant's line suitable to be marketed under ordinary conditions has long since been cut and removed and very little timber is left remaining in said territory suitable to be marketed under any conditions; that the largest shipper of lumber available to the line of the defendant is Rodman Lumber Co., whose product amounts in volume to more than all the other lumber and cross-tie operators along the line of this defendant, has other means of transporting its product than over the line of this defendant, and gives the bulk of its business to the Atlantic Coast Line Railroad, or ships by water over the St. John's River, and has never given this defendant but a very small portion of its business and that the product of the said Rodman Lumber Company exceeds the combined amount of that of all the other lumber shippers along the line of the defendant. That this defendant attaches hereto and makes a part hereof marked Exhibit "A," a schedule showing the earnings and expenses of this railroad from the time of the organization of this defendant in April, 1915, which shows a total loss of Thirty-five thousand, Five Hundred Thirty-one and 51/100 (\$35,

331.51) Dollars during said period up to October 31st, 1917; that this defendant has now in cash & in bank the sum of Two Hundred Sixty-three and 88/100 (\$263.88) Dollars; that this defendant will owe at the end of November, 1917, to its employees and for materials, etc., approximately Three Thousand Dollars; that there is no prospect of the net receipts from the operation of the said road being sufficient with the cash assets above mentioned, to pay said indebtedness to its employees and material-men, etc.

422 That at the time of the organization of this defendant in order to acquire the said railroad line and the equipment from Assets Realization Company it incurred an expense of about Two Hundred Sixty Thousand (\$260,000.00) Dollars, representing the purchase price of said property and on July 1st, 1915, in order to secure said indebtedness to the Assets Realization Company, this defendant executed and delivered a trust deed to one William S. Hood as Trustee, which trust deed embraces all of the property owned by this defendant, and was executed to secure certain bonds therein specified and also to secure any temporary bonds which might be issued, and pursuant to the terms of said trust deed this defendant did issue a temporary bond in the principal sum of Three Hundred Thousand Dollars and placed said bond with the said Assets Realization Company as security for its said indebtedness to the Assets Realization Company and interest thereon, and that this defendant has never been able to pay any part of the principal of said indebtedness to the said Assets Realization Company or any part of the interest upon said indebtedness, which interest at six (6) per cent, since the first day of July, 1915, amounts to about Thirty-Eight Thousand (\$38,000.00) Dollars, so that with the loss of Thirty-five Thousand Five Hundred Thirty-one and 51/100 (\$35,531.51) Dollars incurred since this defendant began operations and the interest above mentioned, this defendant has really lost about Seventy-five Thousand Dollars since it began operations; that this defendant has been wholly dependent upon the indulgence of the Assets Realization Company and has exhausted every means known to its officers in an effort to increase its revenues but that the time has now come when it is unable to procure any further credit for the operation of its said road; that the temporary increase in its business can under no circumstances be expected to progress to a point where the said railroad can be reasonably expected to pay operating expenses exclusive of any interest upon the cost of its properties. That there are few, if any, new enterprises being opened up along the line of this defendant and that much the greater portion of the said territory is wholly uncultivated and unoccupied, and few, if any, new settlers are entering into said territory.

423 That since the defendant began the operation of said road it has not been allowed to increase any of its freight rates and on the contrary, the Railroad Commission of the State of Florida has persistently reduced said freight rates by revision of its classifications and otherwise, and that the cost of labor has increased and the cost of almost all supplies used by this defendant has increased

in price at a tremendous rate, as indicated by schedule "B" hereto attached and made a part hereof.

That this defendant has very little equipment for operating said road and that its equipment consists of three locomotives, two of which are over thirty years old, and that in order to keep said locomotives in operation the necessary amount of money spent on them in repairs since the defendant bought said locomotives is greater than the present value of the said locomotives, and even this present value of the locomotives is probably due to the temporary increase in the market value of such machinery; that the defendant has only two flat cars which are used for work train service only; that the defendant has three passenger coaches that are in running condition, and one baggage car and two coaches that are only good for scrap and are not in use; that in order to continue the operation of the defendant's line with regard to the public safety, it will be necessary to expend at once upon its track and equipment at least Twenty-five Thousand Dollars upon the five first items mentioned in Schedule "C" which is hereto attached and made a part hereof; that it is imperatively necessary that such expense be incurred if the said road is to be operated as a public carrier, even though there is no increase whatever in its traffic.

That the defendant's property is not under any circumstances worth the amount of its present indebtedness and this defendant is insolvent and can procure no credit or funds sufficient to

424 operate its railroad after the 30th of November, 1917.

That this defendant has never paid any salaries to its President or any of its Directors except to the Director who also holds the office of Vice-President and General Manager, who has at all times been in active charge of the operation of said road and that said Vice President and General Manager has devoted his entire time exclusively to the operation of said road since it was acquired by this defendant, and that the said defendant has only maintained one general office for the conduct of its business and that the said general manager is employed at said office and only has the assistance of a rate clerk, a stenographer and an auditor, all of whom have been paid moderate salaries, much below what is customary on short line railroads, and that defendant's business has at all times been operated upon the most economical policy which its officers could devise with proper regard to public safety. That the present officers of this defendant being without any resources with which to discharge the obligations of this defendant incurred in the further operation of its railroad and being without the hope of earning sufficient money to discharge obligations in the future, are unwilling to retain its employees, even if it could do so; and for these reasons and none other, the defendant has notified all of its patrons and connecting carriers that it will not operate its trains after the 30th of November, 1917, as alleged in the third paragraph of the complainant's bill.

Having fully answered this defendant sets up by way of demurrer:

1st. That there is no equity in complainant's bill.

2nd. That it does not appear that this proceeding is authorized by law.

3rd. That it does not appear that the complainant is entitled to the relief prayed, or any relief.

425 Wherefore, this defendant prays the judgment of the Court.

HOCKER & MARTIN,
Solicitor for the Defendant.

OCKLAWAHA VALLEY RAILROAD COMPANY,
By S. P. HOLLINRAKE,
Vice President.
[CORPORATE SEAL.]

STATE OF FLORIDA,
County of Marion:

Before me, the undersigned officer, personally appeared S. P. Hollinrake, who being by me first duly sworn deposes and says that he is Vice President and General Manager of the defendant named in the foregoing answer, that he has read the statements contained in complainant's bill and also has read the statements contained in the foregoing answer and that the statements in the said answer are true; that the seal annexed to the foregoing answer is the corporate seal of the defendant Ocklawaha Valley Railroad Company and that the demurrer incorporated in the foregoing answer is not interposed for the purpose of delay.

S. P. HOLLINRAKE.

Sworn to and subscribed before me, this the 24th day of November, 1917.

MABEL JOHNSON,
Notary Public. [NOTARIAL SEAL.]

I, William Hocker, of counsel for the defendant in the above styled suit, hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

WM. HOCKER.

Ocklawaha Valley Railroad Company.

Deficit of the Ocklawaha Valley Railroad Company, Showing Gross Earnings and Expenses from April 15th, 1915, to October 31st, 1917.

426	Earnings.	Expenses.	Deficit.
From April 15th, 1915 to December 31st, 1915.....	31,940.36	36,941.86	5,001.50
From January 1st, 1916 to December 31st, 1916.....	38,588.52	50,591.52	12,003.00
From January 1st, 1917 to October 31st, 1917.....	32,142.08	50,669.09	18,527.01
Total	102,670.96	138,202.47	35,531.51

EXHIBIT A.

Ocklawaha Valley Railroad Company.

In order to keep the road in operation, it will be necessary to spend immediately for:

25M Cross Ties @ 40¢.....	\$10,000.00
Repairs to Trestles and Waterways.....	4,500.00
Repairs to Coaches	1,200.00
Repairs to Flat Cars	350.00
Repairs to Locomotives.....	9,000.00
Shops and Machinery	15,000.00
	<hr/> 40,050.00

EXHIBIT B.

Partial List of Material and Supplies Purchased by the Ocklawaha Valley Railroad Since April 15th, 1915, Showing Percentage Increase in Prices.

Cross Ties	40	% Increase
Bridge Timbers	60	% Increase
Air Hose	87	% Increase
Track Bolts	226	% Increase
Stay Bolts	142	% Increase
Stay Bolt Iron	103.5	% Increase
Nails	70	% Increase
427 Railroad Spikes	120	% Increase
Car Wheels on Axles	140.4	% Increase
Valve Oil	53½	% Increase
Gasoline	89	% Increase

Wood for fuel, 16 1/3% Increase, and now demanding additional increase of 16 1/3%.

The above figures are taken from the records of the Ocklawaha Valley Railroad.

EXHIBIT C.

Partial List of Material and Supplies Now Needed by the Ocklawaha Valley Railroad, Showing Percentage Increase in Prices April, 1915.

Car Axles	272	% Increase
Boiler Flues	381.3%	Increase
Lagging	458	% Increase
Rivets, All Kinds	211.7%	Increase
Car Springs	116.2%	Increase
Flue Ferrules	237.7%	Increase
Glass	98	% Increase
Nuts, Square and Hexagon	158.8%	Increase
Steel Plate	362.6%	Increase

(Endorsements:) 1465. In the Circuit Court of Putnam County, Florida, in Chancery. State of Florida vs. Ocklawaha Valley Railroad Company, a Corporation. Answer and demurrer of defendant. Filed Nov. 26, 1917. J. T. Wills, Judge. Hoeker & Martin, Attorney-at-Law, Ocala, Florida.

STATE OF FLORIDA,
County of Putnam:

428 I, R. J. Hancock, Clerk Circuit Court, hereby certify That, the above and foregoing is a true and correct copy of what it purports to be from the face thereof and as the same appears of file in the office of the Clerk Circuit Court, Putnam County, Florida.

In testimony whereof, I have hereunto affixed my hand and Official Seal, this 16th, day of June, A. D. 1919.

[SEAL.]

R. J. HANCOCK,
Clerk Circuit Court.

In the Circuit Court of the 8th Judicial Circuit of the State of Florida in and for Putnam County. In Chancery.

THE STATE OF FLORIDA, Complainant,

vs.

OCKLAHAHA VALLEY RAILROAD COMPANY, Defendant.

Bill for Injunction.

This cause came on to be heard on the 26th day of November, 1917, at Gainesville, Florida, upon the application of the State of Florida, the complainant, for temporary injunction or restraining order, and the same having been considered upon the bill and answer filed herein, and having been fully argued by Counsel, the Court finds that a temporary restraining order be issued.

It is, therefore, upon consideration thereof, ordered and adjudged that the Ocklawaha Valley Railroad Company, its Officers, Agents and Employees be, and they are hereby enjoined and restrained from discontinuing the service they are now rendering as a public or common carrier, and are hereby ordered and directed to continue the operation of one mixed train each way daily, except Sunday, over every part of the line of the said Ocklawaha Valley Railroad Company between Ocala and Palatka, until the further order of this Court.

429 It is further ordered that the said Ocklawaha Valley Railroad Company, its Officers, Agents and Employees be, and they are hereby enjoined and restrained from taking up or removing any of the rail or track belonging to the said Ocklawaha Valley Railroad Company, or removing or disposing of any part of its rolling stock or other property necessary for the discharge of its duty as a public or common carrier under the Statutes of the State of Florida, and the terms of this order, until the further order of this court.

Done and ordered at Gainesville, Florida, this 28 day of November, A. D. 1917.

J. T. WILLS,
Judge.

(Endorsements.)

1465. Record verified in the Circuit Court of the 8th Judicial Circuit of the State of Florida, in and for Putnam County. In Chancery. The State of Florida, Complainant, vs. Ocklawaha Valley Railroad Company, Defendant. Bill for Injunction. Filed Nov. 30, 1917. Recorded on the 30 day of Nov., A. D. 1917, in Min. Ct. Ct. Book 5, p. 542. R. J. Hancock, Clerk Circuit Court. By W. A. Williams, Jr., D. C. (Official Seal.)

STATE OF FLORIDA,
County of Putnam:

I hereby certify. That the above and foregoing is a true and correct copy of what it purports to be from the face thereof and as the same appears of record in Min. Ct. Ct. Book 5, at page 542, of the Public Records, Putnam County, Florida.

430 In testimony whereof, I have hereunto affixed my hand and Official Seal, this 16th day of June, A. D. 1919.

R. J. HANCOCK,

[SEAL] *Clerk Circuit Court, Putnam County, Florida.*

The State of Florida to all and singular the Sheriffs of the State of Florida, Greetings: to Ocklawaha Valley Railroad Company, a Corporation:

You are hereby commanded, and strictly enjoined, that, laying all other business aside, and notwithstanding any excuse, you personally be and appear before the Judge of our Court, for the County

of Putnam, on the 7 day of Jan. A. D. 1918, at the Court House of said County, to answer to a bill of complaint exhibited against you in our said Court by State of Florida (Bill for Injunction) and to do further and receive what our said Court shall have considered in that behalf. And this you are not to omit under a penalty of Five Hundred Dollars.

Witness, the Hon. J. T. Wills, Judge of said Court, the 30 day of Nov. in the year A. D. 1917.

R. J. HANCOCK,
Clerk Circuit Court.

[OFFICIAL SEAL.]

(Endorsed on the back as follows:) No. 1465. In Circuit Court, Eighth Judicial Circuit of Florida, Putnam County, in Chancery. State of Fla. vs. Ocklawaha Valley R. R. Co. Subpoena. 431 Filed Dec. 1, 1917. R. J. Hancock, Clerk. D. C. Mullin, Complainant's Solicitor.

Received this Writ November 30th, A. D. 1917, and executed the same by delivering a true copy of this original to James Perry Ward, resident business agent for the within named Ocklawaha Valley Railroad Company, a corporation and at same time reading to him this the Original and informing him the contents hereof.

Done in Putnam County, Florida, this Nov. 30th, A. D. 1917.

P. M. HAGAN,
Sheriff.

Fee 85.

STATE OF FLORIDA,
County of Putnam:

I, R. J. Hancock, Clerk Circuit Court, hereby certify that the above and foregoing is a true and correct copy of what it purports to be from the face thereof and as the same appears of file in the office of the Clerk of the Circuit Court, Putnam County, Florida.

In testimony whereof, I hereunto set my hand and official seal 16th day of June, A. D. 1919.

R. J. HANCOCK,
Clerk Circuit Court.

[SEAL.]

432 In the Circuit Court of the 8th Judicial Circuit of the State of Florida in and for Putnam County. In Chancery.

THE STATE OF FLORIDA, Complainant,

vs.

OCHLAWAHA VALLEY RAILROAD COMPANY, Defendant.

Bill for Injunction.

This cause came on to be heard on the 26th day of November, 1917, at Gainesville, Florida, upon the application of the State of Florida, the Complainant, for temporary injunction or restraining order, and the same having been considered upon the bill and answer filed herein, and having been fully argued by Counsel, the Court finds that a temporary restraining order should be issued.

It is, therefore, upon consideration thereof, ordered and adjudged that the Ochlawaha Valley Railroad Company, its Officers, Agents and Employees be, and they are hereby enjoined and restrained from discontinuing the service they are now rendering as a public or common carrier, and are hereby ordered and directed to continue the operation of one mixed train each way daily, except Sunday, over every part of the line of the said Ochlawaha Valley Railroad Company between Ocala and Palatka, until the further order of this Court.

It is further ordered that the said Ochlawaha Valley Railroad Company, its officers, Agents and Employees be, and they are hereby enjoined and restrained from taking up or removing any of the rail or track belong- to the said Ochlawaha Valley Railroad Company, or removing or disposing of any part of its rolling stock or other property necessary for the discharge of its duty as a public or common carrier under the statutes of the State of Florida, and the terms of this order, until the further order of this Court.

Done and ordered at Gainesville, Florida, this 28 day of November, A. D. 1917.

J. T. WILKS,
Judge.

433 Filed for record November 30, 1917. R. J. Hancock,
Clerk.

Recorded November 30, 1917. By W. A. Williams, Jr., D. C.

STATE OF FLORIDA,
County of Putnam:

I, R. J. Hancock, Clerk of Circuit Court, hereby certify that the above and foregoing is a true and correct copy of what it purports to be from the face thereof and as the same appears of record in Chancery Orders Book 5 at Page 542, etc. of the Public Records, Putnam County, Florida.

In testimony whereof, I have hereunto set my hand and affixed the Official Seal, this 30th day of November, A. D. 1917.

R. J. HANCOCK,
Clerk Circuit Court.

[OFFICIAL SEAL.]

Endorsements.

Certified Copy

Received this West November 30th, A. D. 1917, and executed same by delivering a true copy of this Original to James Perry Ward, resident business Agent for the within named Oklawaha Valley Railroad Company, a Corporation, and at the same time reading to him this the Original and informing him the contents hereof.

Done in Putnam County, Florida, this Nov. 30th, A. D. 1917.

P. M. HAGAN,
Sheriff.

To 1 Sheriff's No.
1465. Filed Dec. 1, 1917. R. J. Hancock, Clerk Circuit Court.
By ———, D. C.

434 STATE OF FLORIDA,
County of Putnam:

I, R. J. Hancock, Clerk Circuit Court, hereby certify, that the above and foregoing is a true and correct copy of what it purports to be from the face thereof and as the same appears of file in the Clerk's Office, Putnam County, Florida.

In testimony whereof, I hereunto set my hand and Official Seal this 16th day of June, A. D. 1919.

R. J. HANCOCK,
Clerk of the Circuit Court.

[OFFICIAL SEAL.]

435 And thereafter, to wit, on the 22nd day of July, A. D. 1919, counsel for Wm. S. Hood, Trustee, one of the parties defendant in the said cause, filed in the said Supreme Court of Florida a demurrer to the amended suggestion for writ of prohibition in said cause, which demurrer is in the words and figures as follows:

436 In the Supreme Court of the State of Florida.

STATE OF FLORIDA ex REL. RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA, and VAN C. SWEARINGEN, Attorney General, Plaintiff,

vs.
W. S. BULLOCK, as Judge, et al., Defendants.

Comes now the defendant Wm. S. Hood, as Trustee, in the above styled cause and says that the amended suggestion for writ of pro-

hibition herein is bad in substance and this defendant demurs to the said amended suggestion upon the grounds hereafter stated.

RUSHMORE, BISBEE & STERN,
HOCKER & MARTIN,
GEORGE C. BEDELL,

Attorneys for W. S. Hood.

437 For grounds of demurrer and substantial matters of law intended to be argued, this defendant shows:

1st. It does not appear by said amended suggestion that the Circuit Court was without jurisdiction of the subject matter or of the parties, or that it was attempting to exercise any jurisdiction not conferred by law.

2nd. It affirmatively appears by the amended suggestion that the Circuit Court had jurisdiction to entertain the suit of Wm S. Hood, Trustee, vs. Oklawaha Valley Railroad Company, to order the sale of the property of the said railroad Company in the alternative, as shown by the amended suggestion, and to confirm the sale thereof as the Court announced it would do.

3rd. It is shown by the several petitions for intervention that the plaintiff herein by and through the Railroad Commission of the State of Florida, sought the judgment of the Circuit Court as to whether or not said railroad should be dismantled.

4th. The amended suggestion shows on its face that the relators have waived their right to question the jurisdiction of the Circuit Court in the premises: (a) by failing to appeal from the Court's decree dismissing the suit of the State of Florida vs. Oklawaha Valley Railroad Company, referred to in said amended suggestion; (b) by intervening in the suit of Wm. S. Hood, Trustee, vs. Oklawaha Valley Railroad Company, for the purpose of "aiding and assisting the Court in determining the public's rights and interest in the continued operation of the said Oklawaha Railroad Company as a common carrier," as it appears by Exhibit "E" of the original suggestion; (c) and by securing the appointment of a receiver by said Circuit Court to operate said railroad.

5th. To grant the relief prayed would deprive this defendant of his property without due process of law, and deny to him the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States.

438

RUSHMORE, BISBEE & STERN,
HOCKER & MARTIN,
GEORGE BEDELL,

*Attorneys for the Defendant,
Wm. S. Hood, Trustee.*

STATE OF FLORIDA.

County of Leon:

Before the undersigned authority personally came E. H. Martin who being by me first duly sworn deposes and says that he is one of the attorneys for the defendant Wm. S. Hood, Trustee, in the above styled cause; that the said Wm. S. Hood, Trustee, does not reside in the State of Florida but in the City of New York, State of New York; that affiant is authorized to make this affidavit in his behalf, and that the foregoing demurrer is not interposed for the purpose of delay.

E. H. MARTIN.

Sworn to and subscribed before me this 22 day of July, 1919.

G. T. WHITFIELD,

Clerk Supreme Court.

I, E. H. Martin, certify that I am one of the attorneys for the defendant Wm. S. Hood, Trustee, in the above styled cause, and that in my opinion the foregoing demurrer is well founded in point of law.

E. H. MARTIN.

439 And thereafter, to-wit, on the 22nd day of July, A. D. 1919, counsel for W. S. Bullock, as Judge, etc., one of the parties defendant in said cause, filed in said Supreme Court his election with respect to demurrer in said cause, which is in the words and figures as follows, to-wit:

440 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS, etc.,
Plaintiff.

VS.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, et al., Defendants.

Comes now the defendant W. S. Bullock, as Judge, and elects to permit his demurrer to the original suggestion herein to stand as demurrer to the suggestion as amended.

RUSHMORE BISBEE & STERN,
GEORGE BEDELL,
HOCKER & MARTIN.

*Attorneys for the Defendant.**W. S. Bullock, Judge, etc.*

441 And thereafter, to-wit, on the 12th day of August, A. D. 1919, the said Supreme Court did enter its Order and file its Opinion on the demurrers in said cause, the Order so entered by said

Supreme Court in said matter being in the words and figures as follows, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1919.

Tuesday, August 12, 1919.

This cause having been submitted to the Court upon demurrers of the respondents to the suggestion and petition, and the same having been duly considered, and the Court being now advised of its judgment to be given in the premises, it is considered, ordered and adjudged by the Court that the demurrer to the suggestion and petition be, and the same is hereby overruled and the peremptory writ of prohibition will be issued, unless the respondent files a plea or answer within thirty days.

The Opinion filed by said Supreme Court in said matter is in the words and figures, as follows, to-wit:

442 In the Supreme Court of Florida, Marion County, June Term, A. D. 1919.

OCKLAWAHA VALLEY RAILROAD COMPANY, a Corporation, Appellant,

v.

WILLIAM S. HOOD, as Trustee, Appellee.

WEST, J.:

Upon a suggestion and petition for a writ of prohibition a rule to show cause was issued by this court. It is made to appear that suit was brought in the Circuit Court of Marion County by William S. Hood, as Trustee, against the Ocklawaha Valley Railroad Company, a corporation. The object of the suit was to foreclose a certain trust deed given by the Railroad Company conveying all properties owned by it to said Trustee for the purpose of securing to Assets Realization Company, a corporation, the payment of certain indebtedness of said Railroad Company to said Assets Realization Company. The bill of complaint which is in the usual form was filed December 10th, 1917. On the following day the defendant filed its answer admitting the allegations of the bill and upon motion of solicitors for complainant an order was made appointing a Receiver for all the properties of the defendant described in the trust deed. Thereafter both the bill and answer were amended in unimportant particulars and by agreement the cause was submitted, without testimony, upon bill and answer and certain affidavits in behalf of complainant. On December 24th, 1917, a final decree in favor of complainant was entered.

In the final decree it was ordered that the properties of the defendant covered by said trust deed "be sold on a legal sale day at public auction, at public outcry to the highest and best bidder, in front of the Court House door in said County of Marion, State of Florida,

and at such sale the Master herein appointed is hereby instructed to first offer (1), all the property included herein to be held, used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, and if as much as \$200,000.00 is bid under such first offering herein provided for, the Master will not offer the same for sale under the second offering herein provided for, otherwise he will immediately thereafter, on the same day and at the same place, (2) offer all of said property for the purpose of and with the privilege on the part of the purchaser of dismantling the same, and that unless the bid received under the second offering herein provided for shall exceed by \$100,000.00 the bid received under the first offering herein provided for, in the event any bid is made under the said first offering, then in that event it will be the duty of the said Master to accept the highest bid made under the first offering herein provided for; but if no bid is made the first offering, or the bid under the second offering herein provided exceeds by \$100,000.00 the bid made under the first offering, then the said Master shall accept the highest bid made under the second offering, and the said Master shall report his doings in this behalf to the Court."

The Master was, by said decree, directed, upon making sale of said properties, to execute a deed therefor to the purchaser, pay the costs incurred in the suit, all taxes properly assessed against such properties, and out of the remainder of the proceeds of the sale to pay to the complainant as trustee the amount due by the defendant to Assets Realization Company.

Subsequently other proceedings were had in said cause not
444 necessary to be recited here. The State by the Florida Railroad Commission from time to time during such proceedings asked leave to intervene and be made a party to said suit, but was not permitted to do so, and was not formally made a party until March 27th, 1919.

In the meantime and after having been by order of court for various reasons from time to time postponed, the sale of said property was made by the Special Master on February 3rd, 1919. At the sale there was no bid under subdivision One (1) of the quoted paragraph of the final decree for the property to be operated as a common carrier. There was a bid under subdivision two (2) of the quoted paragraph of the final decree for the property with the privilege of dismantling it and ceasing to operate the said railroad as a common carrier, which bid was accepted and the sale and proceedings of the Special Master reported to the Court.

Upon exceptions to the Master's report and a motion for confirmation of the sale after an extended recital of the proceedings in the cause and at the request of counsel the court by its order dated May 5th, 1919, fixed a day when an order would be made confirming the sale and directing the execution of a deed to the purchaser, and further directing that upon the consummation of the sale the railroad be dismantled and the Receiver discharged. The purpose in fixing a day for the making of such order, so it is recited, was to give opportunity to the Receiver and the Railroad Commission to take

such further action in the matter as seemed to them to be necessary and proper.

On May 10th, 1919, two days before the day fixed by the court for the entry of its order confirming the sale and permitting the dismantling of the road, upon suggestion and petition to this court, a rule was issued as prayed requiring the Circuit Judge to show cause why a writ of prohibition should not issue forbidding him to enter an order in said cause confirming the sale of the property of said defendant Railroad Company as junk to be dismantled, and from authorizing or decreeing the dismantling, taking up or
445 removing any of the rails or tracks of said carrier, or from exercising any further jurisdiction in said cause relating to the junking or dismantling of said property.

By demurrer to the suggestion and petition the question is presented of whether a Circuit Court in this State has jurisdiction in a suit in which the State is not a party brought by a Trustee against a common carrier railroad company to foreclose a trust deed upon the properties of such railroad company given to the trustee to secure the payment of the indebtedness of the railroad company and in such suit order the railroad dismantled its properties sold and removed and its operation as a common carrier discontinued.

This question must be answered in the negative upon the theory that the operation of a Common Carrier railroad is a business so affected with a public interest that when once undertaken and begun it can not be discontinued and the road so operated dismantled and abandoned by a proceeding in which the State and the public are not represented. By the acceptance of its Charter from the State such a company is permitted to exercise certain rights not enjoyed by individuals. It is given certain of the attributes of sovereignty itself, such as the power of eminent domain. It likewise is charged with the performance of certain public duties, namely, the duties of a Common Carrier. While it is constructed by private capital and is primarily controlled by individual effort it is a public instrumentality subject in its operation to regulation by public authority. Accordingly therefore the public has such an interest in the operation of such a road that, when once undertaken, it may not be discontinued by a proceeding in which the State is not represented, when such discontinuance has not been consented to by the State. 22 R. C. L. p. 750; *State v. Dodge City, M. & T. Ry. Co.*, 53 Kan. 377, 36 Pac. Rep. 747; *Gates v. Boston & New York Air Line R. R. Co.*, 53 Conn. Rep. 333; *People v. Colorado Title & Trust Co.*, — Colo. —, 178 Pac. Rep. 6; *Brooks-Scanlon Co. v. Railroad Commissioners of Louisiana*, — La. —, 81 South. Rep. 727.

446 In the case of *State v. Dodge City, M. & T. Ry. Co.*, supra, the Supreme Court of Kansas in discussing a similar question, said: "Railroads, like all other public thoroughfares, are public instrumentalities. The power to construct and maintain railroads is granted to corporations for a public purpose. The right to exercise the very high attributes of sovereignty, the power of eminent domain, and of taxation to further the construction of railways could not be granted to aid a purely private enterprise. The rail-

way corporation takes its franchises subject to the burden of a duty to the public to carry out the purposes of the charter. The road, when constructed, becomes a public instrumentality, and the road-bed, superstructure, and other permanent property of the corporation are devoted to the public use. From this use neither the corporation itself, nor any person, company, or corporation deriving its title by franchise, either at voluntary or judicial sale, can divert it without the assent of the State. It matters not whether the enterprise, as an investment, be profitable or unprofitable. The property may not be destroyed without the sanction of that authority which brought it into existence. Without legislative sanction, railroads could not be constructed. When once constructed, they may only be destroyed with the sanction of the State."

This we think is the true rule. In the instant case, as may be observed from the statement, the State was not made a party to the suit until after the decree of foreclosure had been entered and the sale of the property made, when the Railroad Commission was permitted to intervene and be made a party. There is no contention that the consent of the State to the discontinuance of the road had been secured. On the contrary it is alleged in the suggestion and petition that, upon application by the Railroad Company to the Railroad Commission, consent to the discontinuance of operation of its road had been denied.

It follows that the petition of the decree of foreclosure authorizing the dismantling of the road was in excess of the jurisdiction of the court.

447 The demurrer to the suggestion and petition is overruled and the peremptory writ of prohibition will be issued, unless the respondent files a plea or answer within thirty days.

Taylor, Ellis and Whitfield, J. J., concur.

Browne, C. J., absent and not participating.

448 In the Supreme Court of Florida, June Term, A. D. 1919.

Original.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS, and
ATTORNEY GENERAL, Relator,

v.

W. S. BULLOCK, Circuit Judge, et al., Respondents.

Prohibition.

WHITFIELD, J., Concurring:

A common carrier railroad company is a corporate entity with franchise rights and obligations, and its property is devoted to a public service which is continuous under the laws of the State. The franchise rights of the corporation may be forfeited to the State; but the corporation cannot lawfully dismantle its road-bed

of ties and rail and withdraw the property that has been devoted to the public service without the acquiescence of the state in some manner prescribed by law.

While a court of equity may enforce a mortgage lien on the property of a railroad corporation by a sale of the property, the court has no authority to order or permit the track and other property of the company to be withdrawn or removed from the public service to which it was devoted, except as may be prescribed by statute; and there is no statute in this State giving such authority to the courts or to other tribunals.

Mortgage contracts cannot give to the courts a power not conferred by law. In this case the contract lien is upon the
449 property of the railroad company as an operating entity charged with the public duty; and the lien can give no right to destroy the operating character of the property in which the public have an interest; nor can the right of the mortgagees be enforced except pursuant to law. If the mortgage lien contracted for is ineffectual to secure the indebtedness, the mortgagee cannot justly complain since the lien was taken under the law governing the subject matter of the lien. See *Barton v. Barbour*, 104 U. S. 126, 135.

The court was without power to order a sale of the railroad company's track and property as junk, thereby destroying the public use of the corporate property, and the writ of prohibition should be made effective.

450 And thereafter, to-wit, on the 9th day of September, A. D. 1919, counsel for the defendants in said cause filed in said Supreme Court their petition for rehearing in said cause, which petition for rehearing is in the words and figures following, to-wit:

451 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS, and
ATTORNEY GENERAL, Relator,

VS.

W. S. BULLOCK, Circuit Judge, et al., Respondents.

Come now the defendants in said cause and respectfully petition this Honorable Court to grant a re-hearing in said cause on the demurrers of the defendants to the amended suggestion of the plaintiff, and these defendants respectfully represent that the judgment entered on said demurrers is erroneous because:

1st. It appears that the question decided and considered by the Court as stated in its opinion is:

"Whether a Circuit Court in this State has jurisdiction in a suit in which the State is not a party, brought by a trustee against a common carrier railroad company to foreclose a trust deed upon

the properties of such railroad company, given to the trustee to secure the payment of the indebtedness of the Railroad Company and in such suit order the Railroad dismantled, its properties sold and removed, and its operation as a common carrier discontinued;"

452 whereas, in fact the State was a party to the suit referred to in said paragraph of said opinion at the time of and before the temporary writ of prohibition issued; which fact is shown not only by the record but by the Court's opinion wherein it is said that:

"The State by the Florida Railroad Commission from time to time during such proceedings asked leave to intervene and be made a party to said suit, but was not permitted to do so, and was not formally made a party until March 27th, 1919."

2nd. Whether or not the State was a party to the suit of Wm. S. Hood, Trustee, versus Ocklawaha Valley Railroad Company before the entry of final decree, is an immaterial question which should not have been considered by this Court in this proceeding, it appearing that the State was a party, subject to the Court's jurisdiction at the time the alternative writ of prohibition issued.

3rd. It is not clear whether this Honorable Court intends to hold that the Circuit Court was without jurisdiction because the State by and through the Florida Railroad Commission was not a party in the suit of Wm. S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, or on what ground the Court holds that the Circuit Court was without jurisdiction.

4th. It is not clear whether the Court holds that the Florida Railroad Commission was not authorized to represent the State in the case of Wm. S. Hood, Trustee, vs. Ocklawaha Valley Railroad Company, and that, therefore, the State was not really a party to that suit.

5th. Inasmuch as the State was permitted to intervene and become a party to the suit and to introduce large volumes of proofs on the question of whether or not the railroad in question should be dismantled, this Court's decision that the Circuit Court was without jurisdiction because of the absence of the State as a
453 party is based on an erroneous assumption of fact; and inasmuch as neither the Florida Railroad Commission nor any other state authority or officer has been vested with the judicial power to give the State's consent to dismantling, the Court's decision that the Railroad in question cannot be dismantled without the State's consent thereto is erroneous, because it will operate to take the property of Wm. S. Hood, Trustee, without due process of law and denies to him the equal protection of the law and takes his property for public use without just compensation.

6th. If the Court's decision is that the Circuit Court was without jurisdiction because the State has not given its consent to dismantling of the railroad in question, the decision is erroneous because there

is no method provided by the laws of Florida by which the State's consent may be obtained, which consent should not be a condition precedent to the exercise of jurisdiction by the Courts when such consent is unreasonably withheld.

7th. The Court has overlooked the fact that the Federal equity courts do not hesitate to entertain suits of the same character as that of Hood, Trustee, vs. Ocklawaha Valley Railroad Company, and that said Courts have not made a condition precedent to the exercise of their jurisdiction that the consent of the State to dismantling be obtained; that the complainant in the Hood case had the right and still has the right to institute his suit in the Federal Court for the same relief sought in the State circuit court, and that the doctrine announced in this Honorable Court's opinion will result in such restriction of the jurisdiction of the state chancery courts as will force litigants to resort to courts of another jurisdiction and of less comprehensive scope for relief which the Florida courts are equally competent to grant.

Respectfully submitted,

RUSHMORE, BISBEE & STERN,
GEORGE C. BEDELL,
HOCKER & MARTIN,
Solicitors for the Defendants.

454 And thereafter, to-wit, on the 30th day of October, A. D. 1919, the said Supreme Court did enter its Order denying the said petition for rehearing in said cause, which Order is in the words and figures as follows, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1919.

Thursday, October 30, 1919.

A petition for rehearing in this cause having heretofore within the time prescribed by the rule been filed, and same having been duly considered by the Court, it is ordered and adjudged by the Court that the said petition be and the same is hereby denied.

455 And thereafter, to-wit, on the 11th day of December, A. D. 1919, an application having been made to the said Supreme Court for the issuance of a peremptory writ of prohibition, the said Court did enter its Order allowing the said peremptory writ, which Order is in the words and figures as follows, to-wit:

In the Supreme Court of Florida, June Term, A. D. 1919.

Thursday, December 11th, 1919.

Application having been made to the Court for the issuance of a peremptory writ of prohibition in this cause, and the Court having approved the form of such writ, it is ordered by the Court that

the Clerk do forthwith issue the peremptory writ of prohibition in this cause in the form approved by the Court.

The peremptory writ of prohibition issued on the 11th day of December, A. D. 1919, in obedience to said order is in the words and figures following, to-wit:

456 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS of the State of Florida, and Van C. Swearingen, Attorney General of Florida, Plaintiff,

v.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, Defendant.

The State of Florida to the Honorable William S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, and William S. Hood, Trustee, Greeting:

Whereas, Upon the suggestion of the Railroad Commissioners of the State of Florida and Van C. Swearingen, Attorney General of Florida, a writ issued out of the Supreme Court of Florida commanding the said W. S. Bullock, Judge as aforesaid, to show cause why writ of prohibition should not be issued to prohibit the said Circuit Court of the Fifth Judicial Circuit of the State of Florida in and for Marion County and the said W. S. Bullock, Judge of said Court, from approving or confirming the sale of certain railroad property in said writ referred to, and from authorizing or decreeing the dismantling, taking up, or removing any of the rails or track of the Ocklawaha Valley Railroad Company, or from exercising any further jurisdiction in the certain cause therein referred to relating to the junking or dismantling of said property, and

Whereas, the said William S. Hood, as Trustee was afterwards admitted to defend against the issuance of the writ prayed by said suggestion, and

457 Whereas, the said W. S. Bullock, Judge of the Circuit Court as aforesaid and the said William S. Hood, Trustee, interposed their several demurrers to the said suggestion, which said demurrers were duly argued and submitted, and the Court having determined that the said demurrers are severally ill-founded and that said decree, in so far as it authorized a dismantling of said railroad, a sale of its property as junk and a discontinuance of its operation as a common carrier, was beyond the jurisdiction of said Circuit Court and the said demurrants having failed to avail themselves of the opportunity allowed them to plead over;

It is now considered by the Court that the Circuit Court of the Fifth Judicial Circuit of the State of Florida in and for Marion County and W. S. Bullock, as Judge of said Court, be and they are hereby prohibited from approving or confirming the sale made under

the decree entered on the 24th day of December, 1917, in a certain cause pending in said court wherein William S. Hood as Trustee is complainant and Ocklawaha Valley Railroad Company, a corporation, is defendant, and from authorizing or decreeing the dismantling, taking up, or removing any of the rails or track of the said Ocklawaha Valley Railroad Company, and from exercising any further jurisdiction in said cause relating to the junking of said property.

This writ, however, applies only to that portion of the final decree which was found to be in excess of the jurisdiction of the court, which portion is hereby eliminated, but all other portions of the final decree remain in full force and effect so that such final decree should read as shown by the attached copy with the parts in brackets eliminated, with full power and authority in the Circuit Court in which the decree was entered to deal in all respects with the matter, except that he shall not, and is hereby prohibited, from undertaking, by decree, order or otherwise, to authorize the dismantling of said railroad, or the taking up and selling of the rails therefrom.

458 Witness the Honorable Jefferson B. Browne, Chief Justice of the Supreme Court of the State of Florida, and the seal of said Court at Tallahassee, this eleventh day of December, A. D. 1919.

[Seal of the Supreme Court.]

G. T. WHITFIELD,

Clerk Supreme Court, State of Florida.

459 In the Circuit Court of the Fifth Judicial Circuit of Florida in and for Marion County. In Chancery.

WILLIAM S. HOOD, as Trustee, Complainant,

VS.

OCKLAHAHA VALLEY RAILROAD COMPANY, a Corporation, etc.,
Defendant.

This cause came on this day to be heard and was argued by counsel, and thereupon, upon consideration thereof it was ordered, adjudged and decreed as follows:

That the defendant Ocklawaha Valley Railroad Company, a corporation organized and existing under the laws of the State of Florida, pay to the complainant, William S. Hood, as Trustee, within three days from this date the sum of Three Hundred Thirty-four Thousand, Nine Hundred Seventy-four and 57/100 (\$334,974.57), with legal interest thereon to be computed from this date until paid, and also the sum of \$12,500.00/00 as a reasonable solicitor's fee for foreclosing said trust deed sued on in this cause, and also to the complainant for his services as Trustee, the sum of \$1,000 00/100, and also all other costs of this suit to be taxed by the Clerk of this Court: that in default of said payments being made as aforesaid, by the said defendant, then in that case the said mortgaged premises mentioned in the said bill of complaint and in said trust deed, to wit:

The line of railroad extending from the terminus of the Company, in the City of Ocala, a distance of six miles, to a point known as "Silver Springs," in the County of Marion, as described and defined in and subject to the terms of that certain lease and agreement, dated December 14, 1909, between the Seaboard Air Line Railroad Company and the Ocala Northern Railroad Company.

The line of railroad extending from Silver Springs to Fort McCoy, in the County of Marion, a distance of 12.3 miles; from Fort McCoy to the City of Palatka, in Putnam County, a distance of 32.5 miles, passing through the towns of Bay Lake and Orange Springs, in Marion County, and passing through Marion County into Putnam County at or near Orange Creek, and thence in Putnam County by way of the towns of Kenwood, Rodman and Kenilworth, to the City of Palatka, and all extensions thereof.

The line of railroad extending from the terminus of the company's line in the City of Palatka, a distance of one and one-half miles, to the terminus of the Company's line in the said City of Palatka, leased from the Georgia, Southern & Florida Railway Company.

The right of way of the Company, one hundred feet in width, from Silver Springs to the City of Palatka.

All and singular the franchises, rights, privileges and immunities now or hereafter appendant or appurtenant to or used in connection with the said lines of the Company and any and all extensions and branches thereof.

Also, that certain lot or parcel of land in Ocala, Florida, in Block 64, Old Survey of the City of Ocala, on which said lot are now located the general offices of the defendant Ocklawaha Valley Railroad Company, which lot or parcel of land is more particularly described in that certain deed of date the 30th day of April, 1915, signed by R. L. Milton as Special Master, as is found of record in the public records of Marion County, Florida, in Deed Book 161, page 357, which said lot is also described in that deed of date November 1st, 1911, signed by E. P. Rentz and Kate W. Rentz to the Ocala Northern Railroad Company, as found of record in Deed Book 150 at page 485 of the public records of Marion County, Florida;

Also, all other property included in that certain trust deed made by Ocklawaha Valley Railroad Company to W. S. Hood, Trustee, recorded in the public records of Marion County, Florida, in Mortgage Book 49, at pages 1 to 32, and recorded in the public records of Putnam County, Florida, in Mortgage Book 7 at page 182 et seq.

All of said property or so much thereof as may be sufficient to realize the amount so due the complainant for principal and interest and also the costs of this suit, including solicitor's fees as aforesaid, and the fees, disbursements and commissions on the sale herein mentioned, and all other costs; to be sold on a legal sale day at public auction, at public outcry to the highest and best bidder, in front of the Court House door in the said County of Marion, State of Florida, and at such sale the Master herein appointed is hereby instructed to [first] offer [1] all the property included herein to be held, used

and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, [and if as much as \$200,000.00 is bid under such first offering herein provided for, the Master will not offer the same for sale under the second offering herein provided for, otherwise he will immediately thereafter, on the same day and at the same place, (2) offer all of said property for the purpose of and with the privilege on the part of the purchaser of dismantling the same, and that unless the bid received under the second offering herein provided for shall exceed by \$100,000.00 the bid received under the first offering herein provided for, in the event any bid is made under the said first offering, then in that event it will be the duty of the said Master to accept the highest bid made under the first offering herein provided for;] but if no bid is made under the [first] offering, [or the bid under the second offering herein provided exceeds by \$100,000.00 the bid made under the first offering, then the said Master shall accept the highest bid made under the second offering, and] the said Master shall report his doings in this behalf to the Court; that F. R. Voecker be and

462 he is hereby appointed Special Master in Chancery of this Court to execute this decree; that he give public notice of the time and place of sale by previously publishing the same for a space of thirty days in one newspaper published in Marion County, Florida; and in one newspaper published in Putnam County, Florida; that the Assets Realization Company, a corporation organized and existing under the laws of the State of New Jersey, or any of the parties to this cause, may become the purchaser or purchasers at said sale; that the said Master on such sale being made shall make, execute and deliver a deed to the purchaser of said properties or any portion thereof; that the said Master out of the proceeds of said sale shall retain his fees, disbursements and commissions on said sale; that he pay to the officers of this Court their costs in this suit; that he shall pay all state and county taxes properly assessed against said property or any part of same; that he pay to the complainant's solicitors their fees for foreclosing this trust deed as herein allowed; that out of the remainder of said proceeds he pay to the complainant Three Hundred Thirty-four Thousand Nine Hundred Seventy-four and 57/100 (\$334,974.57) as Trustee for the Assets Realization Company, a corporation organized and existing under the laws of the State of New Jersey, or that such sum be paid to the said Assets Realization Company, together with legal interest thereon from the date of this decree to the date of said sale; or if such remainder shall be insufficient to pay the whole of said amount and interest as aforesaid then that he apply said remainder to the extent to which it may reach in satisfaction of said amount and interest, and that the said Master take receipts from the respective parties to whom he may have made payments as aforesaid, and file the same together with his report of sale to this Court.

It is further ordered, adjudged and decreed that the said complainant as Trustee as aforesaid or the said Assets Realization
463 Company in the sale hereunder of the property above mentioned, shall be entitled to use in bidding all or any part of said indebtedness of Three Hundred Thirty-four Thousand, Nine Hundred Seventy-four and 54/100 (\$334,974.54) Dollars above

mentioned, with interest, and have his or its bid credited on said indebtedness, if such bid is accepted, [provided that the highest bidder under the second offering provided for in this decree, if his bid exceeds by One Hundred Thousand Dollars the highest bid made under the first offering, or if no bid is made under the first offering shall be required by the said Master to immediately deposit with the said Master \$10,000 00/100 in cash upon his said bid, to be applied as may be needed in the payment of costs and taxes; provided, also, that in the event the highest bid made under the second offering shall not exceed by One Hundred Thousand Dollars the highest bid made under the first offering, then and in that event the highest bidder under the first offering herein provided for shall immediately deposit with said Master in cash, the full amount of his said bid;]

That in case the said property shall sell for more than sufficient to pay the principal interest, costs and fees of this suit and taxes upon said property, the said Master after making the payments aforesaid as ordered, shall bring such surplus moneys into Court without delay to abide the further order of the Court.

It is further ordered, adjudged and decreed that the defendant and all persons, firms or corporations claiming by through or under it since the commencement of this suit be forever barred and foreclosed from all equity of redemption, of, in and to said property herein described or any part thereof in the event of sale hereunder.

It is further ordered, adjudged and decreed that upon the execution and delivery of the conveyance [or conveyances] aforesaid the said purchaser or purchasers, his, her or their representatives or assigns shall be given possession of said property herein described and every portion thereof conveyed to him, her or them, and any purchaser shall be entitled upon the production of the master's deed herein to demand possession of any part of said property included in such deed, and on refusal so to do the persons so refusing will be held and considered in contempt of this Court. The Court reserves the right to reject any or all bids made hereunder.

One and ordered at Chambers at Ocala, Florida, this the 24th day of December, 1917.

W. S. BULLOCK,
Judge.

465 STATE OF FLORIDA,
County of Leon:

I, G. T. Whitfield, Clerk of the Supreme Court of the State of Florida, do hereby certify that the foregoing pages numbered from 1 to 464, inclusive, contain a true and correct copy of the records and pleadings filed and all proceedings had in the Supreme Court of the State of Florida in the case of the State of Florida ex rel. Railroad Commissioners of the State of Florida and Van C. Swearingen, Attorney General of Florida, Plaintiff v. W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, and Wm. S. Hood, as Trustee, Respondents, and of the opinion and decision of

the said Supreme Court filed in said case on the 12th day of August, A. D. 1919, and of the judgments of the said Supreme Court entered therein on the said 12th day of August, A. D. 1919, 30th day of October, A. D. 1919 and the 11th day of December, A. D. 1919, as the same appear from the originals now on file and of record in my office as Clerk of the Supreme Court of the State of Florida.

Witness my hand and Official Seal at Tallahassee, the Capital of the State of Florida, this 23rd day of February, A. D. 1920.

[Seal Supreme Court of the State of Florida.]

G. T. WHITFIELD,

Clerk Supreme Court, State of Florida.

466 And thereafter, to-wit, on the 12th day of February, A. D. 1920, came the Respondents in said cause by their attorneys and filed in the said Supreme Court of Florida, a petition for a writ of error to the Supreme Court of the United States, which original petition, with the allowance thereof by the Chief Justice of said Supreme Court of Florida, are herewith incorporated and made a part hereof, verified copy of same having been retained in the files of the Supreme Court of Florida, which said petition, with the allowance thereof, are in the words and figures, as follows, to-wit:

467 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA, and VAN C. SWEARINGEN, Attorney General of Florida, Plaintiff,

vs.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, and Wm. S. Hood, as Trustee, Respondents.

To the Honorable Jefferson B. Browne, Chief Justice of the Supreme Court of Florida:

The above named W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, and William S. Hood as Trustee feeling aggrieved by the several rulings and decisions of the Supreme Court of Florida in the above styled cause, and especially by the prohibition issued out of said court under date of the 11th day of December, 1919, pray the allowance of a writ of error to the Supreme Court of the United States to review said several rulings and decisions and the said prohibition, on the grounds set forth in the Assignment of Errors herewith filed, and herewith present security for the prosecution of said writ as required by law.

HOCKER & MARTIN,
RUSHMORE BISBEE & STERN,
GEORGE C. BEDELL,

Attorneys for Respondents W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, and William S. Hood, as Trustee.

468 Upon presentation of the foregoing petition and the assignment of errors, and the security therein referred to, it is hereby ordered that writ of error be and the same is hereby allowed as therein prayed.

JEFF'N B. BROWNE,

Chief Justice Supreme Court of Florida.

469 And thereupon, to wit, on the 12th day of February, A. D. 1920, the said Respondents, W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, and Wm. S. Hood, as Trustee, filed in the Supreme Court of Florida, a writ of error bond, as required by said allowance of writ of error therein, which bond, with its approval by the Chief Justice of the Supreme Court of Florida, is in the words and figures as follows, to-wit:

470 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS OF THE STATE OF FLORIDA, and VAN C. SWEARINGEN, Attorney General of Florida, Plaintiff,

vs.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, and Wm. S. Hood, as Trustee, Respondents.

Know all men by these presents: That Fidelity and Deposit Company of Maryland, a corporation organized and existing under the laws of Maryland and authorized by the laws of Florida to do business in Florida as a surety company, is held and firmly bound unto the State of Florida in the sum of Five Hundred Dollars, for the payment whereof well and truly to be made it binds itself and its successors, subject only to the condition hereinafter written, that is to say:

Whereas, William S. Hood as Trustee and William S. Bullock Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida are about to sue out a Writ of Error to the Supreme Court of the United States to reverse a judgment of the Supreme Court of Florida granting a prohibition directed to the said William S. Bullock Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida and the said William S. Hood, Trustee, which writ of prohibition bears date the eleventh day of December, 1919; Now the condition of this obligation is such that if the above

471 named W. S. Bullock Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida and William S. Hood as Trustee shall prosecute their said writ of error to effect, and answer all costs if they fail to make their plea good, then this obligation shall be null and void and else shall remain in full force and effect.

Dated this 12th day of February, 1920.

FIDELITY & DEPOSIT COMPANY OF MARYLAND,

By H. J. JAMES,

Its Attorney in Fact.

[SEAL.]

Taken and approved as and for sufficient security upon the Writ of Error above referred to.

JEFF'N B. BROWNE,
Chief Justice of the Supreme Court of Florida.

472 And Thereupon, to-wit, on the 12th day of February, A. D. 1920, came the Respondents W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida and Wm. S. Hood, as Trustee, by their attorneys and filed in the Supreme Court of Florida their assignment of errors therein, the same being in the words and figures as follows, to-wit:

473 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS OF THE State of Florida, and Van C. Swearingen, Attorney General of Florida, Plaintiff,

vs.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, and Wm. S. Hood, as Trustee, Respondents.

Come now the respondents above named W. S. Bullock Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida and William S. Hood as Trustee, and jointly and severally assign error upon the several rulings and decisions of the Supreme Court of Florida in the above styled cause, as follows, Viz.—

1. The Court erred in overruling the demurrer of the said W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida.

2. The Court erred in overruling the demurrer of the respondent William S. Hood as Trustee.

3. The Court erred in its ruling and decision granting the writ of prohibition, bearing date December 11th, 1919.

The said several assignments are respectively based on the grounds following, to-wit:

The authority of the State of Florida alleged by the Railroad Commissioners and the Attorney General, and sustained by the Supreme Court of Florida is repugnant to the Constitution of the United States, and operates to deprive respondent William S. Hood, as Trustee, of his property without due process of law, and subjects

474 private property to public use without just compensation.

And on divers other grounds appearing upon the face of the record.

Wherefore, the said respondents pray that the said several rulings and decisions may be severally reversed.

HOCKER & MARTIN,
RUSHMORE, BISBEE & STERN,
GEORGE C. BEDELL,
Attorneys for said Respondents.

475 And thereupon, to-wit, on the 12th day of February, A. D. 1920, there was issued in said cause a writ of error to the Supreme Court of the United States, which original writ of error, with allowance thereof by the Chief Justice of the Supreme Court of the State of Florida, is herewith incorporated and made a part hereof, verified copy of same having been retained in the files of the Supreme Court of Florida, the said writ of error and allowance thereof being in the words and figures, as follows, to-wit:

476 UNITED STATES OF AMERICA, ss:

The President of the United States of America to the Honorable the Judges of the Supreme Court of Florida, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Florida, before you or some of you, being the highest court at law or equity of the said State, in which a decision could be had in the said suit between the State of Florida upon the relation of the Railroad Commissioners of the State of Florida and Van C. Swearingen as Attorney General of the State of Florida as relators and W. S. Bullock Judge of the Circuit Court of the Fifth Judicial Circuit of Florida and Wm. S. Hood as Trustee as respondents, wherein the authority under the State of Florida asserted by the said relators was asserted by the said respondents to be repugnant to the Constitution of the United States and the decision sustained the validity of the said authority, manifest error hath happened to the great damage of the said W. S. Bullock Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida and the said William S. Hood Trustee, as by their complaint appears; we being willing that error if any hath been should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf do command you, if judgment be therein given that then under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same at Washington on the 10th day of March next, in the said Supreme Court of the United States to be then and there held, that the record and proceedings aforesaid being inspected the said Supreme Court of the United States may cause further to be done therein to correct

477 that error what of right and according to the laws and customs of the United States should be done.

Whitness the Honorable Edward Douglass White, Chief Justice of the United States the 12th day of February, 1920.

[SEAL.]

F. W. MARSH,

*Clerk of the United States District Court
for the Northern District of Florida,*

By MIRIAM CHOATE,

Deputy Clerk.

Allowed by

FEFF'N B. BROWNE,

Chief Justice of the Supreme Court of Florida.

478 And thereupon, to-wit, on the 12th day of February, A. D. 1920, there was issued in said cause a citation to the said defendants in error, the State of Florida, the Railroad Commission of Florida, and to the Honorables R. Hudson Burr, Newton A. Blicht and Royal C. Dunn, together constituting the Railroad Commissioners of the State of Florida, and to the Honorable Van C. Swearingen, Attorney General of the State of Florida, which original citation, with the acceptance of service of same by the said defendants in error, is herewith incorporated and made a part hereof, verified copy of same having been retained in the files of the Supreme Court of Florida, and same being in words and figures, as follows, to-wit:

479 UNITED STATES OF AMERICA, ss:

To the State of Florida, The Railroad Commission of Florida, and to the Honorables R. Hudson Burr, N. A. Blicht, and Royal C. Dunn, Together Constituting the Railroad Commissioners of the State of Florida, and to the Honorable Van C. Swearingen, Attorney General of the State of Florida, Greeting:

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington within thirty days from the date hereof. pursuant to a writ of error filed in the Clerk's office of the Supreme Court of Florida, wherein W. S. Bullock Judge of the Circuit Court of the Fifth Judicial Circuit of Florida and William S. Hood as Trustee jointly and severally assigning errors are plaintiffs in error and the State of Florida upon the relation of the Railroad Commissioners of the State of Florida and Van C. Swearingen Attorney General of Florida is defendant in error, to show cause if any there be why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Jefferson B. Browne, Chief Justice of the Supreme Court of Florida, this 12th day of February, 1920.

JEFFN B. BROWNE,
Chief Justice of the Supreme
Court of Florida.

Attest:

G. T. WHITFIELD,
Clerk of the Supreme Court of Florida.

[OFFICIAL SEAL.]

Service of the above citation accepted this 12th day of February, 1920.

DOZIER A. DE VANE,
Attorney and Counsel for the Railroad
Commission of the State of Florida and
Attorney and Counsel for the Relators.
VAN C. SWEARINGEN,
Attorney General of the State of Florida.

480 And thereafter, to-wit, on the 16th day of February, A. D. 1920, the attorneys for the afore-mentioned plaintiffs in error therein filed in said Supreme Court of Florida their written directions to the Clerk of said Court for making up transcript of the record, and his return in said cause, to the Supreme Court of the United States, with the receipts of the attorneys for the defendants in error therein for copies of such directions *of the attorneys for the defendants in error therein for copies of such directions*, the said directions and receipts being in the words and figures as follows, to-wit:

481 In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS OF THE State of Florida and Van C. Swearingen, Attorney General of Florida, Plaintiff,

vs.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida, and WM. S. HOOD, as Trustee, Respondents.

To George Talbot Whitfield, Esq.,
Clerk of the Supreme Court of Florida:

In making up the transcript of the record upon the writ of error issued in the above styled cause on the 12th day of February, 1920, you will please to copy *include* and include in said transcript the following papers and proceedings, that is to say:

1. Petition and Suggestion for Writ of Prohibition,
2. Order allowing Rule to Show Cause,
3. Rule to Show Cause,
4. Proof of service of Rule,
5. Motion to amend Suggestion,
6. Order allowing same,
7. Motion to require filing of transcript in the case of Hood, Trustee, vs. Ocklawaha Valley Railroad Company,
8. Order granting said motion,
9. Demurrer of W. S. Bullock, Judge,
10. Motion to dismiss,
- 482 11. Motion to make certain transcripts part of record and to make Hood, Trustee, respondent,
12. Order granting said motion,
13. The several transcripts referred to in said motion, and also the transcript filed July 22, 1919,

14. Demurrer of Hood, Trustee,
15. Election of W. S. Bullock, Judge, with respect to demurrer,
16. Order and Opinion on demurrers,
17. Petition for Rehearing,
18. Order denying same,
19. Judgment allowing Prohibition,
20. The Writ of Prohibition,
21. Petition for Writ of Error and Order allowing same,
22. Bond on Writ of Error and approval thereof,
23. Assignment of Errors,
24. Writ of Error,
25. Citation and Proof of Service,

Any other paper necessary to make the transcript a complete transcript of the record.

HOCKER & MARTIN,
RUSHMORE, BISBEE & STERN,
GEORGE C. BEDELL,
Attorneys for Respondents.

483

In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS OF THE
State of Florida and Van C. Swearingen, Attorney General of
Florida, Plaintiff,

vs.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Cir-
cuit of Florida, and WM. S. HOOD, as Trustee, Respondents.

Received of George C. Bedell copy of Directions to the Clerk for
the making up of the Transcript of Record upon the Writ of Error
sued out in the above styled cause.

DOZIER A. DE VANE,
Attorney and Counsel for Relators.

484

In the Supreme Court of Florida.

THE STATE OF FLORIDA ex Rel. RAILROAD COMMISSIONERS OF THE
State of Florida and Van C. Swearingen, Attorney General of
Florida, Plaintiff,

VS.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Cir-
cuit of Florida, and Wm. S. Hood, as Trustee, Respondents.

Received of George C. Bedell copy of Directions to the clerk for
the making up of the Transcript of Record upon the Writ of Error
sued out in the above styled cause.

VAN C. SWEARINGEN,
Attorney General of Florida.
T.

485 UNITED STATES OF AMERICA,
Supreme Court of Florida:

In obedience to the commands of the within writ, I herewith trans-
mit to the Supreme Court of the United States a duly certified
transcript of the complete record and proceedings in the within en-
titled cause, with all things concerning the same;

And I further certify that the foregoing pages numbered from
466 to 484, inclusive, contain

Copy of the Original petition for writ of error and allowance
thereof.

Copy of writ of error bond.

Copy of original citation, together with acceptance of service
therein.

Copy of assignment of errors.

Copy of original writ of error, with allowance thereof, and

Copy of directions to the Clerk for making up transcript of the
record, with receipt of attorneys for defendants in error for a copy
of such directions to the Clerk.

And I further certify that the original writ of error bond and
verified copies of the original petition for writ of error, with allow-
ance thereof, and of the original writ of error and of the original cita-
tion are now on file in my office as Clerk of the Supreme Court of
the State of Florida, the originals of such petition for writ of error,
writ of error, and citation being transmitted herewith to the Supreme
Court of the United States.

In witness whereof, I have hereunto subscribed my name and affixed the Seal of the said Supreme Court of Florida, in the City of Tallahassee, the Capital, this the 23rd day of February, A. D. 1920.

[Seal Supreme Court of the State of Florida.]

G. T. WHITFIELD,
Clerk Supreme Court, State of Florida.

Endorsed on cover: File No. 27,510. Florida Supreme Court. Term No. 755. W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, and William S. Hood, trustee, plaintiffs in error, vs. The State of Florida upon the relation of the Railroad Commissioners of the State of Florida, et al. Filed February 28th, 1920. File No. 27,510.

IN THE
SUPREME COURT
of the United States

262

No. 700 October Term 1919

W. R. BULLOCK, Judge of the Circuit
Court of the Fifth Judicial Circuit
of Florida and WILLIAM M. HOOD,
as Trustee.

Plaintiffs in Error,

vs.

THE STATE OF FLORIDA, ex-rel. Rail-
road Commissioners of the State
of Florida and VAN C. SWANENGM,
Attorney General of Florida.

Defendants in Error.

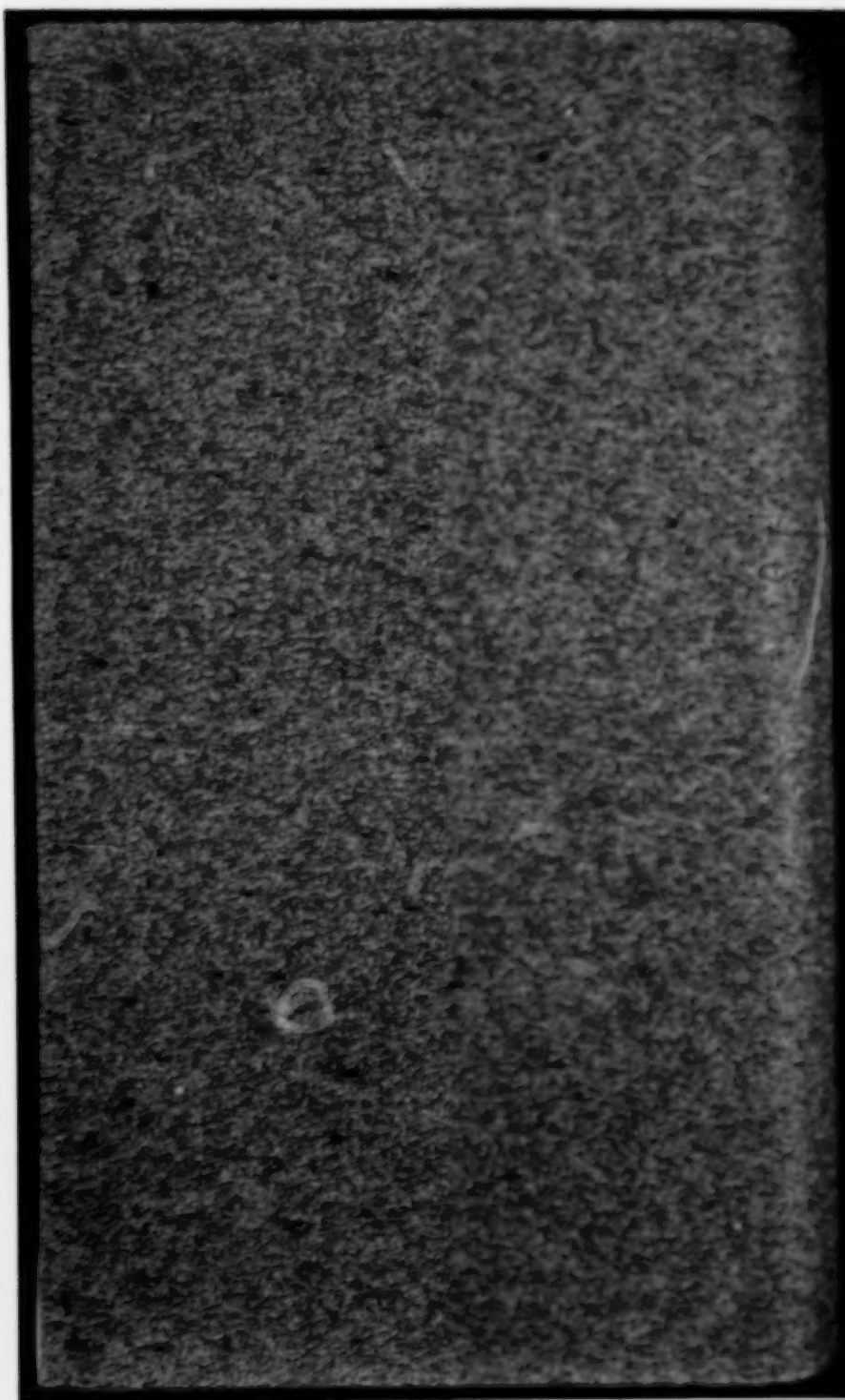
**PETITION FOR HABEAS CORPUS AND WRIT IN
REMOVAL TERRITORY**

HOCK & MARTIN

BIRMINGHAM, ALABAMA

JOHN C. HARRIS

Attorneys and Counsel for Petitioners.



In the Supreme Court of the United States

W. S. BULLOCK, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida and WILLIAM S. HOOD, as Trustee,

Plaintiffs in Error,

vs.

THE STATE OF FLORIDA, *ex rel.* Railroad Commissioners of the State of Florida and VAN C. SWEARINGEN, Attorney General of Florida,

Defendants in Error.

No. 755

PETITION FOR CERTIORARI.

To the Honorable the Justices of the Supreme Court of the United States:

William S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, and William S. Hood as Trustee jointly and severally prosecuting a writ of error to review the judgment and writ of prohibition directed to the said William S. Bullock, as Judge of the Circuit Court of the Fifth Judicial Circuit of Florida and William S. Hood as Trustee, by this their petition for certiorari respectfully represent unto the Court as follows:

1. There is now pending in this court a writ of error jointly and severally sued out by these petition-

era to review the judgment and writ of prohibition directed to the said William S. Bullock as Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, issued upon a suggestion in behalf of the State of Florida by the Railroad Commissioners of the State of Florida and the Attorney General of said State. Said writ of error was sued out and allowed by the Chief Justice of the Supreme Court of Florida on a petition and assignments of error, setting forth among other things that the said judgment and writ gave effect to an authority under the State of Florida, repugnant to the Constitution of the United States. And because the said judgment and writ operates to deprive the petitioner William S. Hood, as Trustee, of his property without due process of law, and subjects private property to public use without just compensation, these petitioners pray the allowance of a writ of certiorari to bring before the Court for review the record of the said judgment and writ and the proceedings had in connection therewith, should this Honorable Court decide that its jurisdiction was not properly invoked by the said writ of error.

2. The said writ of prohibition prohibited the said Circuit Court and the said William S. Bullock as Judge of said court from approving or confirming the sale of certain railroad property under a certain decree entered on the 24th day of December, 1917, in a certain cause pending in said court wherein the above mentioned William S. Hood as Trustee is complainant and the Oeklawaha Valley Railroad Company is defendant, and from authorizing or de-

ereeing the dismantling, taking up or removing any of the rails or track of said Ocklawaha Valley Railroad Company, and from exercising any further jurisdiction in the said cause relating to the junking of the said property.

The decree above referred to was rendered in a foreclosure suit instituted by the petitioner William S. Hood to foreclose a trust deed or mortgage on the railroad property on the 10th day of December, 1917.

By the above mentioned decree the Master was directed to offer the property at the sale as a common carrier and if as much as two hundred thousand dollars was bid no other offering was to be made, and if no bid was received as a common carrier it was then to be offered with a right to dismantle, and if the bid under this offering did not exceed the first bid by One hundred thousand dollars then the bid if any under the first offering was to be accepted.

Two suits in equity were instituted by the State through the Railroad Commissioners having for their purpose to compel the continued operation of the railroad, and on December 22, 1918, the court in the foreclosure case appointed H. S. Cummings as receiver to operate the road. In an order and opinion of the Court contained in the record it is said. "This receiver was appointed because it was urgently insisted on the part of the State through its railroad commission, that by a proper management the road could be operated so as to pay operating expenses

and a reasonable sum on the investment, and it was with an honest desire to make a test of this matter that this receiver was appointed." The sale was postponed and from time to time testimony was taken before a Master as to the possibility of continuing the operation of the road, and on May 5, 1919, the Court made its finding, the correctness of which has never been questioned, that "this Railroad is totally insolvent, that it cannot be operated so as to pay the cost of operation and taxes and have any net income whatever," and set forth the facts leading to this conclusion as follows:

"I find from the evidence in this case that this road has been one that has been constructed wholly from private resources; that is, there has (have) been no public grants or donations to aid in the construction of this road * * * * * that prior to the present corporate existence there had been financial disasters and a foreclosure of a mortgage and re-organization finally culminating in the present corporation * * * * *. It is estimated that this road cost between \$450,000.00 and \$500,000.00 * * *. In order to secure the purchase money at foreclosure sale, bonds were issued endorsed to the Assets Realization Company and to secure these bonds a mortgage was given, which mortgage is now the subject of foreclosure. I find that the large sawmill interests at Silver Springs have been burned and abandoned and at Fort McCoy have been abandoned, so there is nothing now to supply the road in the way of sawmills except a little sawmill that cannot be taken into considera-

tion as forming much of an asset * * * * *
 and that outside the sawmills, the business that
 supported this road was negligible * * * * *.
 The country is sparsely settled, the timber nearly
 all gone and very little farming interests * * * * *.
 I find that there are now some \$12,000 to \$16,000
 taxes due."

At the sale there were no bidders for the road
 as a common carrier and on the 3rd day of February,
 1919, the property was bid in by the Trustee
 for \$225,000.00, under the provision of the decree
 allowing a dismantling of the road. Pending the
 confirmation of this sale the prohibition complained
 of issued.

In his demurrer to the amended suggestion the
 petitioner Hood questioned the authority of the
 State invoked by the relators on the ground of its
 being repugnant to the Federal Constitution.

Upon the overruling of this demurrer, the Court
 handed down an opinion in which among other
 things it said: "It matters not whether the enter-
 prise, as an investment, be profitable or unprofitable.
 The property may not be destroyed without the
 sanction of that authority which brought it into
 existence. Without legislative sanction, railroads
 could not be constructed. When once constructed,
 they may only be destroyed with the sanction of the
 State." (Quoting from a Kansas decision, and
 adding) "This we think is the true rule." In the
 opinion there is also discussion of the fact that the

State's representatives were not formally admitted to the cause until after the passing of this decree. But after the filing of the petition for rehearing, and upon further consideration, the court framed its writ so as not only to prohibit the confirmation of the sale, but prohibited the court "from exercising any further jurisdiction in the said cause relating to the junking of said property." Whereas, as this record shows and as the trial court found, it was to secure the purchase money with which the corporation acquired the property that bonds were issued endorsed to the Assets Realization Company, and the mortgage securing same given, now the subject of foreclosure. And it having been established that the railroad company is insolvent, that the road cannot be made to pay operating expenses, and that it cannot be sold as a common carrier; the mortgagee's security is destroyed if he cannot have the property sold in the only way that any value can be realized from it, and that is as rails, spikes and railroad material. The trial court found, and it is not disputed, that the railroad company itself is insolvent, that the property cannot be operated and made to pay expenses and taxes much less interest on bonds; and as no one will advance credit to the company knowing that its property is immune from legal process of execution, the corporation has not power to consume the corpus in attempted operation, supposing that policy were economically or legally justifiable. And so the case stands.

There is no statute in anywise affecting the matter. The action of the court is based, or attempted

to be based, upon principles of general law; and those principles, it is submitted, are not so to be applied as to deprive the bondholders of the right to enforce their security by the sale of the property for the only use for which it is salable.

“If it should be found that it cannot be operated, except at a loss, it would be open to the public, if it be authorized as a public measure, to condemn the property and take it for public purposes at its ascertained value; but it cannot take it by the method of requiring its operation to the absolute exhaustion of the assets, and in that way effect the taking of private property for public purposes without compensation.”

Central Bank & Trust Corporation v.
Cleveland, 252 Fed. Rep. 534.

A brief memorandum of authorities bearing upon the question is herewith filed.

The petitioners exhibit in support of this petition a duly certified transcript of the record of the case and pray reference thereto as may be necessary, and certiorari to review the said judgment and writ of prohibition in accordance with the statute in such case made and provided.

HOCKER & MARTIN,
RUSHMORE, BISBEE & STERN,
GEORGE C. BEDELL,
Attorneys for Petitioners.

I, George C. Bedell, of counsel for the petitioners in the above styled cause hereby certify that in my

opinion the foregoing petition is well founded in point of law.

GEORGE C. BEDELL.

BRIEF IN SUPPORT OF PETITION.

At the time that the bondholders advanced the money for acquiring this property there was in Florida no statute or decision placing the dedication of the property to public use on any other terms than the constitutional terms of just compensation. Nor was there any statute or decision limiting the right of the bondholders to invoke the same process for realizing upon their security that any other suitor would possess. It is not contended that there is any statutory limitation upon the right of the Trustee under this mortgage to enforce his lien by the sale of the property in the only way that anything can be realized from it. It is conceded that the matter is governed by the general law. And it cannot be that under the general law this mortgagee is to be utterly deprived of any practical benefit from his security because the mortgagor railroad company is insolvent and its railroad hopelessly unable to make operating expenses.

Central Bank & Trust Corporation v. Cleveland et al., 252 Fed. 530, (C. C. A. 4th Ct.)

Jack v. Williams, 113 Fed. 823; aff'd as State of South Carolina v. Jack, 145 Fed. 281.

State of Iowa v. Old Colony Trust Co., 215
Fed. 307, (C. C. A. 8th Ct.)

New York Trust Co. v. Portsmouth & Exeter
Street Ry. Co., 192 Fed. 728, (Ct. Ct.
N. H.)

Northern Pacific R. R. Co. v. Dustin, 142
U. S. 492.

York & North Midland Ry. v. The Queen,
1 El. & Bl. 858, and

Great Western Ry. v. The Queen, 1 El. &
Bl. 874.

The People v. The Albany & Vermont R. R.
Co., 24 N. Y., 261.

Morawetz on Private Corporations, Sec.
1119, p. 1082.

It is said in the first of the above cited cases:

“The insistence of the relators in this interven-
tion is in effect that private property should be
taken for public use without compensation.” P.
534.

Respectfully submitted,
HOCKER & MARTIN,
RUSHMORE, BISBEE & STERN,
GEORGE C. BEDELL,
Of Counsel for Petitioners.



U. S. Supreme Court, U. S.
FILED

MAR 19 1928

JAMES D. MAHER,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

W. S. BULLOCK, Judge of the Circuit
Court of the Fifth Judicial Circuit
of Florida and WILLIAM S. HOOD, as
Trustee, Plaintiffs in Error,

—against—

THE STATE OF FLORIDA, ex rel. Railroad
Commissioners of the State of Flor-
ida and VAN C. SWEARINGEN, Attor-
ney General of Florida, Defendants
in Error.

N. 262

**SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI**

HOCKER & MARTIN,
RUSHMORE, BIERRE & STERN,
GEORGE C. BEDELL,
*Attorneys and Counsel
for Petitioners.*

IN THE
SUPREME COURT OF THE UNITED STATES.

W. S. BULLOCK, Judge of the Circuit
Court of the Fifth Judicial Circuit
of Florida and WILLIAM S. HOOD, as
Trustee, Plaintiffs in Error,

—against—

THE STATE OF FLORIDA, *ex rel.* Railroad
Commissioners of the State of Flor-
ida and VAN C. SWEARINGEN, Attor-
ney General of Florida, Defendants
in Error.

No. 755.

**SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION
FOR A WRIT OF CERTIORARI.**

This supplemental brief is submitted because of a decision of this Court (*Brooks-Scanlon Co. v. Railroad Commission of Louisiana*, 40 Supreme Court Reporter, 183; reversing 144 La., 1086), published since the filing of the petition in the above-entitled cause and believed to be conclusive as to the merits thereof.

The foreclosure decree, mentioned in the petition, required that the railroad be first offered for sale as a common carrier and that, if as much as \$200,000 was bid therefor, such bid was to be accepted, but that, if less than \$200,000 was offered or if no bid was made for operation as a common carrier, the road was then

to be offered with the right to dismantle; and, unless the bid with the right to dismantle exceeded by \$100,000 any bid for operation as a common carrier, the latter was to be accepted. The decree thus gave preference to a bid from anyone desiring to operate the road and, in that regard, followed the practice in *New York Trust Co. v. Portsmouth & Exeter Street Railroad Co.*, 192 Fed. 728, (Circuit Court of New Hampshire). There was no bid for the road for operation as a common carrier.

The Court, after a hearing, rendered a decree against the State, acting through the Railroad Commissioners, in an action brought by them to require the continued operation of the road. The Court sought to ascertain through its own Receiver if the road could be operated without loss and, after conducting this experiment and a hearing before a Master, found that "this railroad is totally insolvent, that it cannot be operated so as to pay the cost of operation and taxes, and have any net income whatever."

The Supreme Court of Florida held in the proceedings under the Writ of Prohibition:

"It matters not whether the enterprise, as an investment, be profitable or unprofitable. The property may not be destroyed without the sanction of that authority which brought it into existence. Without legislative sanction, railroads could not be constructed. When once constructed, they may only be destroyed with the sanction of the State."

In *Brooks-Scanlon Co. v. Railroad Commission of Louisiana*, *supra*, this Court held, on *certiorari*, that a company, the plaintiff in that cause, could not be compelled to operate its railroad where it could not do so

without loss therefrom, though its other business of lumbering was sufficiently remunerative to absorb the loss and make returns on its entire business; and, hence, that a judgment of the Supreme Court of Louisiana enjoining the company from dismantling the railroad, and denying its application to set aside an order of the Railroad Commission of that State, which required such operation, should be reversed on the ground that it deprived the company of its property without due process of law.

Mr. Justice Holmes, delivering the opinion, said (p. 184):

"A carrier cannot be compelled to carry on even a branch of business at a loss, much less the whole business of carriage. . . . It is true that if a railroad continues to exercise the power conferred upon it by a charter from a State, the State may require it to fulfill an obligation imposed by the charter even though fulfillment in that particular may cause a loss. . . . But that special rule is far from throwing any doubt upon a general principle too well established to need further argument here. . . . If the plaintiff be taken to have granted to the public an interest in the use of the railroad it may withdraw the grant by discontinuing the use when that use can be kept up only at a loss. . . . The principle is illustrated when the constitutionality of a rate is shown to depend upon whether it yields to the parties concerned a fair return. . . . Whatever may be the forms required by the local law it cannot give the Court or Commission power to do what the Constitution of the United States forbids, which is what the order and injunction attempt."

In the Portsmouth & Exeter Street Railroad case, *supra*, the Court dealt with a situation where the laws of the State under which the railroad was constructed declared (p. 729):

"That all railroads are public and that the proprietors thereof shall not discontinue them or any part of them",

yet sustained an alternative right of dismantling after the public interests had been given primary consideration.

In *State of Iowa v. Old Colony Trust Co.*, 215 Fed. 307 (C. C. A., 8th Circuit), the point as to the jurisdiction of a court of equity to grant the relief of dismantling in a foreclosure proceeding was expressly considered and decided in the affirmative (p. 314).

The Circuit Court of Florida for the Fifth Circuit is a court of general jurisdiction both in law and in equity; no statute was involved in the determination of the Florida Supreme Court and its conclusion was, therefore, based upon general legal principles. Necessarily, therefore, in concluding that the Circuit Court was without power to decree the sale of the property with the privilege of dismantling, the Supreme Court of Florida reached a conclusion wholly at variance with that of the Federal and other Courts as shown by the cases cited hereinbefore, and in the brief annexed to the petition.

It is most earnestly and respectfully submitted that the petition should be granted.

HOCKER & MARTIN,
RUSHMORE, BIGGER & STERN,
GEORGE C. BIRDELL,
Of Counsel for Petitioners.

SUPREME COURT OF THE UNITED STATES

October Term 1919

No. 755.

W. S. Bullock, Circuit Judge, and
William S. Hood, Trustee,
Plaintiffs in Error,

vs.

State of Florida Upon the Relation
of the Railroad Commission and
Attorney General of the State of
Florida,
Defendants in Error.

On Error to the Supreme Court of the State of Florida.

BRIEF AND ARGUMENT FOR THE DEFENDANTS IN ERROR

STATEMENT.

William S. Hood, as trustee for the Assets Realization Company, filed in the Circuit Court of Marion County, Florida, his bill against the Ocklawaha Valley Railroad Company, a corporation.

The object of the suit was to foreclose a certain trust deed, given by the Railroad Company to said trustee conveying all properties owned by it, to secure the payment of certain indebtedness of said Railroad Company to the said Assets Realization Company.

The railroad lies wholly within the State of Florida and extends from Ocala to Palatka, a distance of approximately forty-six (46) miles.

The bill of complaint was filed on December 10, 1917. On the following day, the defendant filed its answer admitting the allegations of the bill, and upon motion of the solicitor for complainant an order was made appointing a receiver for all the properties of the defendant described in the trust deed.

In the foreclosure suit, the complainant sought to have the court decree a sale of the railroad's property as junk and relieve the purchaser from the duty of operating the road and authorize him to dismantle the property and take up the rails, etc.

Thereafter, both the bill and answer were amended in unimportant particulars and by agreement the cause was submitted to the court, without testimony, upon bill and answer as amended and certain affidavits of the complainant, and on December 24, 1917, a final decree in favor of the complainant was entered by the terms of which among other things it was ordered that:

"The properties of the defendant covered by said trust deed 'be sold on a legal sale day at public auction, at public outcry to the highest and best bidder, in front of the courthouse door in said county of Marion, State of Florida, and at such sale the master herein appointed is hereby instructed to first offer (1) all the property included herein to be held, used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, and if as much as \$200,000.00 is bid under such first offering herein provided for, the master will not offer the same for sale under the second offering herein provided for, otherwise he will immediately theafr, on the same day and at the same

place, (2) offer all of said property for the purpose of and with the privilege on the part of the purchaser of dismantling the same, and that unless the bid received under the second offering herein provided for shall exceed by \$100,000.00 the bid received under the first offering herein provided for, in the event any bid is made under the said first offering, then in that event it will be the duty of the said master to accept the highest bid made under the first offering herein provided for; but if no bid is made the first offering, or the bid under the second offering herein provided exceeds by \$100,000.00 the bid made under the first offering, then the said master shall accept the highest bid made under the second offering, and the said master shall report his doings in this behalf to the court.' '' (Record 10).

Subsequently, other proceedings were had in said cause not necessary to be recited here. The State, by the Florida Railroad Commission, from time to time during such proceedings asked leave to intervene and be made a party to said suit, but was not permitted to do so, and was not formally made a party until March 27, 1919.

In the meantime and after having been by order of court for various reasons from time to time postponed, the sale of said property was made by the special master on February 3, 1919. At the sale there was no bid under subdivision 1 of the quoted paragraph of the final decree for the property to be operated as a common carrier. There was a bid under subdivision 2 of the quoted paragraph of the final decree for the property with the privilege of dismantling it and ceasing to operate the said railroad as a common carrier, which bid was accepted and the sale and proceedings of the special master reported to the court.

Immediately upon the Railroad Commissioners being permitted to intervene in said cause, the jurisdiction of the Circuit Court to approve the master sale of February 3, 1919,

was questioned. The Circuit Court, by its order of May 5, 1919, held that it had jurisdiction to approve such sale and fixed a day when an order would be made confirming the sale and stated that on the consummation of the sale he would order the railroad dismantled and the receiver discharged. The purpose of fixing a day for making such order was to give opportunity to the Railroad Commission to take such further action in the matter as seemed to it to be necessary and proper. (Record 199,203).

Subsequently, therefore, on May 10, 1919, but prior to the confirmation of the sale made by the special master on February 3, 1919, the State upon the relation of the Railroad Commission and the Attorney General of Florida filed a suggestion and petition in the Supreme Court of Florida, and upon such suggestion and petition to said court a rule was issued requiring the circuit judge to show cause why a writ of prohibition should not issue forbidding him to enter an order in said cause confirming the sale of the property of the defendant Railroad Company as junk to be dismantled.

By demurrer to the suggestion and petition the question presented to the Supreme Court of Florida was whether a Circuit Court in that State had jurisdiction in a suit in which the State was not a party, brought against a common carrier Railroad Company to foreclose a trust deed upon the properties of such Railroad Company given to secure the payment of the indebtedness of the Railroad Company, to order the railroad dismantled, its properties sold and removed and its operation as a common carrier discontinued.

The court held that that portion of the decree of foreclosure authorizing the dismantling of the road and its operation as a common carrier discontinued was in excess of the jurisdiction of the Circuit Court. For convenience and ready reference the court's opinion is printed as appendix "A" to this brief.

This case presented for consideration a question of great importance to the State.

ARGUMENT.

The suggestion filed with the Supreme Court of Florida questioned the jurisdiction of the court below upon two grounds, only one of which is entitled to consideration here. It is as follows:

A circuit judge is without jurisdiction in a suit brought to foreclose a mortgage to decree that a railroad may discontinue operation and be dismantled for the purpose of satisfying to better advantage the lien of the creditor of the railroad.

The Supreme Court of Florida held that the lower court was without jurisdiction to determine such question in the foreclosure suit **to which the State was not a party**. The first question which is presented here is, Will this court review the decision of the Supreme Court of Florida? On this question, it is claimed by the plaintiffs in error

“That the authority of the State of Florida alleged by the railroad commissioners and the Attorney General and sustained by the Supreme Court of Florida is repugnant to the Constitution of the United States and operates to deprive respondent, William S. Hood, as trustee of his property without due process of law and subjects private property to public uses without just compensation.”

The authority of the State of Florida sustained by the Supreme Court of Florida neither deprives the trustee of his property without due process of law nor subjects private property to public uses without compensation. The decision of the Supreme Court merely holds that an inferior court of Florida is without jurisdiction to order dismantling of a carrier's property to satisfy a creditor's lien taken upon property then charged with a public duty, where the State is not a party to such suit. If the mortgage lien contracted for is ineffectual to secure the indebtedness, the mortgagee can not justly complain,

"since the lien was taken under the law governing the subject matter of the lien. *Barton v. Barbour*, 104 U. S. 126."

State v. Bullock, circuit judge, 82 So. 866.

In a concurring opinion, Mr. Justice Whitfield said:

"There is no statute in this State giving such authority to the courts or to other tribunals."

This presents no question reviewable by this court.

The cases upon this question are numerous:

Iowa C. R. Co. v. Iowa, 160 U. S. 389.

Leeper v. Texas, 139 U. S. 462.

Morley v. Lake Shore M. & S. R. Co., 146 U. S. 162.

Missouri Pacific Railroad Co. v. Fitzgerald, 160 U. S. 556.

Walker v. Sauvient, 92 U. S. 90.

Jenkins v. Lowenthal, 110 U. S. 222.

New Orleans v. New Orleans Water Works Co., 142 U. S. 79.

McManus v. O'Sullivan, 91 U. S. 578.

Jacks v. Helena, 150 U. S. 288.

Moran v. Horsky, 178 U. S. 205.

United States v. Thompson, 93 U. S. 586.

Wood v. Brady, 150 U. S. 18.

Loeber v. Schroeder, 149 U. S. 580.

St. Paul M. & R. Co. v. Todd County, 140 U. S. 282.

Northern R. Co. v. New York, 12 Wall, 384.

Kinnard v. Louisiana, 92 U. S. 280.

The State of Florida has maintained throughout this proceeding that the trustee for the bondholders has no right to have determined in a foreclosure suit the question of dismantling of a carrier's property and that this was especially true where the State was not a party to the proceedings. The rights of the purchaser at the foreclosure proceedings are not involved in this case and can not be considered. Whether or not the owners of the property have a right to discontinue operation and dismantle the property is not involved in this case and cannot be here considered.

After this court decided *Brooks-Seanlon Co. v. Railroad Commission of Louisiana*, decided February 2, 1920, a motion for a rehearing was filed with the Supreme Court of Florida and that court's attention called to the decision of this court in that case. The Supreme Court found that the question presented and decided in the *Brooks-Seanlon* case was not presented or decided in this case and denied the motion for a rehearing. We think the decision presents no question to be determined by this court.

Assuming now that the case does present a question to be considered by this court, we pass to the question considered by the State court as follows:

"A Circuit Court in this State has no jurisdiction in a suit, brought by a trustee against a common carrier railroad company, to foreclose a trust deed, upon the properties of such railroad company given to the trustee to secure the payment of the indebtedness of the railroad company, without the assent of the State, to order the railroad dismantled, its properties sold and removed, and its operation as a common carrier discontinued."

To quote from *Gates v. B. & N. Ry. Co.*, 5 Atl. 695:

"Upon principle it would seem plain that railroad property once devoted and essential to public use, must remain pledged to that use so as to carry to full completion the purpose of its creation; and that this public right exists by reason of a public exigency demanded by the occasion and created by the exercise by a private person of the powers of the State, is superior to the property rights of corporations, stockholders and bond-holders."

And further:

"* * * * a corporation * * * *
has no right as against the State to abandon the enterprise."

To like effect, this court in *Thomas v. West Jersey Railroad Co.*, 101 U. S. 71, said:

"The franchises and powers granted to such corporations (railroads) are in a large measure designed to be exercised for the public good, and this exercise of them is the consideration of the public grant. Any contract by which the corporation disables itself to perform those duties to the public, or attempts to absolve it from their obligation, without the consent of the State, is a violation of its contract with the State, and is forbidden by public policy, and is, therefore, void."

Like language will be found in *Central Transportation Co. v. Pullman Palace Car Co.*, 139 U. S. 24.

This duty of a carrier is most frequently defined in the following language:

"Such corporations may not by any act of their own, without the consent of the State, disable themselves from performing the functions the undertaking of which was the consideration for the public grant."

Thomas v. W. Jer. R. Co., 101 U. S. 71,
Talcott v. Pine Grove T. P. W., 1 Flipp 120,
Gates v. B. & N. Y. Air Line R. Co., 58 Conn. 342,
King v. Severn & W. R. Co., 2 Barn & Ald. 646,
State v. Hartford & N. H. R. Co., 29 Conn. 353,
R. R. Comm. v. Portland & O. C. R. Co., 63 Maine 269,
Union Pac. R. Co. v. Heinney, Fed. Cases 4666,
People v. A. & Vt. R. Co., 24 N. Y. 269,
Potwin Place v. Topeka R. Co., 51 Kans. 609,
San Antonio St. R. Co. v. State, 38 S. W. 55,
S. & O. Canal Co. v. Shuman, 97 Ga. 400,
Hangen v. Albina Light & Water Co., 21 Ore. 411,

Spokane St. R. Co. v. Spokane Falls, 6 Wash. 524,
 Ohio & M. R. Co. v. People, 121 Ill. 483,
 Riggs v. Johnson County Comm., 6 Wall. 198, 18 Law ed.
 774,
 A. C. L. R. Co. v. N. C. Comm. 206 U. S. 1,
 Mo. Pac. R. Co. v. Kansas, 216 U. S. 262.

In *King v. Severn W. R. Co.*, referred to above, the English Court said:

"Where a railway was made under the authority of an Act of Parliament, by which the proprietors were incorporated; and by which it was provided that the public should have the beneficial enjoyment of the same, the Company having afterwards taken up the railway; held, that a mandamus might issue to compel the Company to reinstate and lay down again the railway."

In the body of the opinion the Court addressed itself upon this subject as follows:

"Both upon principle and authority, I am of the opinion, that the Court ought to grant this mandamus. Numerous applications are made to Parliament by speculative individuals to form these navigable canals and railways; great public benefits are held out as an inducement to the Legislature to sanction these undertakings; and when their sanction is obtained, is it to be permitted to these persons to say, that they will do only that which is beneficial to themselves, and disregard entirely the interests of the public?"

In the following cases are also found many other additional authorities in support of the court's reasoning.

Bacon et al. v. Bos. & Maine R. Co., 73 Atl. 128, (text P. 140).

State of N. Y. v. Alb. & Vt. R. Co., 37 Barb. 216,
 People of the State of N. Y. v. A. & Vt. R. Co., 19 Howard's
 Practice 523,

People of the State of New York v. Cen. & Hud. River
 Ry. Co., 28 Hun. 543.

State v. Spokane St. R. Co., 53 Pac. 719,
 So. Pac. Co. v. R. R. Comm. of Ore., 119 Pac. 727,
 Steward v. Denver R. G. R. Co., 131 Pac. 981 (text 992),
 San Antonio St. Ry. Co. v State, 38 S W. 54.

Persons in private business may abandon it at their whim or pleasure. Not so with a railroad. It is a public highway. It is created by the State for the public use. It exercises the State's great power of eminent domain for the public good. The Supreme Court of the United States, in *Barton v. Barbour*, 104 U. S. 135, said:

"A railroad is authorized to be constructed more for the public good to be subserved than for private gain. As a highway for public transportation, it is a matter of public concern, and its construction and management belong primarily to the commonwealth, and are only put into private hands to subserve the public convenience and economy. But the public retain rights of vast consequence in the road and its appendages, which neither the company nor any creditor or mortgagee can interfere with. They take their rights subject to the rights of the public, and must be content to enjoy them in subordination thereto. It is therefore a matter of public right by which the Courts, when they take possession of the property, authorize the receiver or other officer in whose charge it is placed to carry on in the usual way those active operations for which it was designed and constructed, so that the public may not receive detriment by the nonuser of the franchises. And in most cases the creditors cannot complain, because their

interests, as well as those of the public, are promoted by preventing the property from being sacrificed at an untimely sale, and protecting the franchisees from forfeiture for nonuser. As a choice, then, of less evil, if not of the most positive good (but generally of the latter also), it has come to be settled law that a Court of equity may, and in most cases ought to authorize its receiver of railroad property to keep it in repair, and to manage and use it in the ordinary way until it can be sold to the best advantage of all interested. The power of the court to do this was expressly recognized in the case of *Wallace v. Loomis*, 97 U. S. 146 (24 L. Ed. 895)."

The Supreme Court of Florida has sufficiently recognized this duty of Public Service Corporations, in decisions heretofore rendered. In *Ellis, Attorney General v. Tampa Water Works Company*, 57 Fla. 533, the Court said:

"The policy of the law is to require by mandatory process the performance by Public Utility Corporations of their duty to the public."

In *State ex rel. Ellis, Attorney General, v. Atlantic Coast Line*, 53 Fla. 650, it was recognized by that Court that the acceptance of a charter by a Railroad Company constitutes a contract between the railroad and the State, the performance of which the State can compel by appropriate proceedings.

In *City of Gainesville v. Gainesville Gas & Electric Power Company*, 65 Fla. 404, the Court said:

"The policy of the law is to require by mandatory process the performance by Public Utility Corporations of their duty to the public. *State ex rel. Ellis, v. Tampa Water Works Company*, 57 Fla. 533, (text 539). A corporation engaged in furnishing electricity to a municipality or its inhabitants and using public streets or exercising other franchise of priv-

illegal in doing so, is thereby performing service of a public nature within the meaning of the constitution and laws of this State, and such a corporation is subject to all lawful governmental regulations to enforce its duties to the public it undertakes to serve.

• • • • The defense undertaken to be shown when the injunction was dissolved is in substance, that the ordinance passed by the city regulating the Company's service and compensation, was in effect confiscatory and unduly arbitrary and burdensome to the Company. This is not sufficient reason for a discontinuance of a public service. • • • • If the regulations imposed by the city are in law and in fact illegal for any reason, the Company has its complete and adequate remedy by appropriate proceedings, but the Company being engaged in rendering a public service, must continue to do so in a reasonable and adequate manner, until relieved of its duty by due process of law. Illegal municipal regulations are not binding, but persons and corporations cannot be permitted to arbitrarily assume to remedy an alleged wrong by refusing to render a public service voluntarily undertaken. The service to the public must be performed and the law will upon proper proceedings enforce the right to reasonable compensation for such service."

This same principle was further recognized by that Court in *State v. L. & N. R. Co.*, 63 Fla. 274.

That a railroad may not derive sufficient revenue to operate its trains, does not necessarily give the road the right to take up its rails and dispose of them on its own motion.

This principle is illustrated thoroughly in the case of *Roland v. Saline River Ry. Co.*, 177 S. Wea. 896, in which the Court says:

"There is some testimony in the record pertaining to show that the Officers of the Company contemplate dismantling it. It does not follow that because we have held that the order of the Railroad Commission was arbitrary and oppressive, the Railroad Company has a right to take up its rails and dispose of them on its own motion. In the case of Freeo Valley Railway Company v. Hodges, 106 Ark. 314, 151 S. W. 281, we held that since railroads are constructed for public use and the public has rights in them which should be protected, railroad corporations are not authorized to abandon their roads and surrender their charters without the consent of the State."

The impotence of the question presented by this case is manifest. If creditors of public service corporations acquire property rights that are superior to all other rights then public service immediately becomes subservient to the wishes of the public service company's creditors, and contracts made by a public service company which disable it from performing its duties to the public become valid. The rights or duties of the owner of the carrier's property are not and cannot be involved in this case. It is a creditor here that is seeking to divest the carrier's property of its dedication to public service because forsooth he will profit thereby.

It is respectfully submitted that should this court find that this case presents a question for its consideration, then the judgment of the Supreme Court of Florida should be affirmed.

Respectfully submitted,

DOZIER A. De VANE,

Attorney for Defendants in Error.

APPENDIX A.

STATE ex rel. RAILROAD COM'RS et al. v. BULLOCK,
Circuit Judge, et al.

(Supreme Court of Florida. Aug. 12, 1919. Rehearing Denied
Oct. 30, 1919.)

(Syllabus by the Court.)

1. RAILROADS 214—DISCONTINUANCE OF OPERATION WITHOUT CONSENT OF STATE.

The operation of a common carrier railroad is a business so affected with a public interest that when once undertaken and begun it cannot be discontinued and the road so operated abandoned and authorized to be dismantled by a proceeding in which the state and the public are not represented, when such discontinuance and dismantling has not been consented to by the state.

2. RAILROADS 214—JURISDICTION OF CIRCUIT COURT TO ORDER DISCONTINUANCE OF OPERATION.

A circuit court in this state has no jurisdiction in a suit brought by a trustee against a common carrier railroad company to foreclose a trust deed upon the properties of such railroad company given to the trustee to secure the payment of the indebtedness of the railroad company without the assent of the state to order the railroad dismantled, its properties sold and removed, and its operation as a common carrier discontinued.

Original prohibition by the State of Florida, on relation of the Railroad Commissioners and Attorney General, against W. S. Bullock, Circuit Judge, and others. Demurrer to the

suggestion and petition for writ of prohibition overruled, and peremptory writ issued, unless respondent file a plea or answer within 30 days.

Dozier A. De Vane, of Tallahassee, for relators.

Hocker & Martin, of Ocala, George C. Bedell, of Jacksonville, and Rushmore, Bisbee & Stern, of New York City, for respondents.

WEST, J. Upon a suggestion and petition for a writ of prohibition, a rule to show cause was issued by this court. It is made to appear that suit was brought in the circuit court of Marion county by William S. Hood, as trustee, against the Ocklawaha Valley Railroad Company, a corporation. The object of the suit was to foreclose a certain trust deed given by the railroad company conveying all properties owned by it to said trustee for the purpose of securing to Assets Realization Company, a corporation, the payment of certain indebtedness of said railroad company to said Assets Realization Company. The bill of complaint, which is in the usual form, was filed December 10, 1917. On the following day the defendant filed its answer admitting the allegations of the bill, and, upon motion of solicitors for complainant, an order was made appointing a receiver for all the properties of the defendant described in the trust deed. Thereafter both the bill and answer were amended in unimportant particulars, and by agreement the cause was submitted, without testimony, upon bill and answer and certain affidavits in behalf of complainant. On December 24, 1917, a final decree in favor of complainant was entered.

In the final decree it was ordered that—

The properties of the defendant covered by said trust deed "be sold on a legal day at public auction, at public outcry to the highest and best bidder, in front of the courthouse door in said county of Marion, state of Florida, and at such sale the master herein appointed is hereby instructed to first

offer (1) all the property included herein to be held, used and operated as a common carrier of goods and passengers from Silver Springs, Florida, to Palatka, Florida, and if as much as \$200,000.00 is bid under such first offering herein provided for, the master will not offer the same for sale under the second offering herein provided for, otherwise he will immediately thereafter, on the same day and at the same place, (2) offer all of said property for the purpose of and with the privilege on the part of the purchaser of dismantling the same, and that unless the bid received under the second offering herein provided for shall exceed by \$100,000.00 the bid received under the first offering herein provided for, in the event any bid is made under the said first offering, then in that event it will be the duty of the said master to accept the highest bid made under the first offering herein provided for; but if no bid is made the first offering, or the bid under the second offering herein provided exceeds by \$100,000.00 the bid made under the first offering, then the said master shall accept the highest bid made under the second offering, and the said master shall report his doings in this behalf to the court."

The master was, by said decree, directed, upon making sale of said properties, to execute a deed therefor to the purchaser, pay the costs incurred in the suit, all taxes properly assessed against such properties, and out of the remainder of the proceeds of the sale to pay to the complainant as trustee the amount due by the defendant to Assets Realization Company.

Subsequently, other proceedings were had in said cause not necessary to be recited here. The state, by the Florida Railroad Commission, from time to time during such proceedings asked leave to intervene and be made a party to said suit, but was not permitted to do so, and was not formally made a party until March 27, 1919.

In the meantime and after having been by order of court for various reasons from time to time postponed, the sale of said property was made by the special master on February

3, 1919. At the sale there was no bid under subdivision 1 of the quoted paragraph of the final decree for the property to be operated as a common carrier. There was a bid under subdivision 2 of the quoted paragraph of the final decree for the property with the privilege of dismantling it and ceasing to operate the said railroad as a common carrier, which bid was accepted and the sale and proceedings of the special master reported to the court.

Upon exceptions to the master's report and a motion for confirmation of the sale after an extended recital of the proceedings in the cause and at the request of counsel, the court by its order dated March 5, 1919, fixed a day when an order would be made confirming the sale and directing the execution of a deed to the purchaser, and further directing that upon the consummation of the sale the railroad be dismantled and the receiver discharged. The purpose in fixing a day for the making of such order, so it is recited, was to give opportunity to the receiver and the Railroad Commission to take such further action in the matter as seemed to them to be necessary and proper.

On May 10, 1919, two days before the day fixed by the court for the entry of its order confirming the sale and permitting the dismantling of the road, upon suggestion and petition to this court, a rule was issued as prayed requiring the circuit judge to show cause why a writ of prohibition should not issue forbidding him to enter an order in said cause confirming the sale of the property of said defendant railroad company as junk to be dismantled, and from authorizing or decreeing the dismantling, taking up, or removing any of the rails or tracks of said carrier, or from exercising any further jurisdiction in said cause relating to the junking or dismantling of said property.

(1) By demurrer to the suggestion and petition the question is presented of whether a circuit court in this state has jurisdiction in a suit in which the state is not a party brought by a trustee against a common carrier railroad company to

foreclose a trust deed upon the properties of such railroad company given to the trustee to secure the payment of the indebtedness of the railroad company, and in such suit order the railroad dismantled, its properties sold and removed, and its operation as a common carrier discontinued.

This question must be answered in the negative upon the theory that the operation of a common carrier railroad is a business so affected with a public interest that when once undertaken and begun it cannot be discontinued and the road so operated dismantled and abandoned by a proceeding in which the state and the public are not represented. By the acceptance of its charter from the state such a company is permitted to exercise certain rights not enjoyed by individuals. It is given certain of the attributes of sovereignty itself, such as the power of eminent domain. It likewise is charged with the performance of certain public duties, namely, the duties of a common carrier. While it is constructed by private capital and is primarily controlled by individual effort, it is a public instrumentality subject in its operation to regulation by public authority. Accordingly, therefore, the public has such an interest in the operations of such a road that, when once undertaken, it may not be discontinued by a proceedings in which the state is not represented, when such discontinuance has not been consented to by the state. 22 R. C. L. p. 750; *State v. Dodge City, M. & T. Ry. Co.*, 53 Kan. 377, 36 Pac. 747, 42 Am. St. Rep. 295; *Gates v. Boston & New York Air Line R. R. Co.*, 53 Conn. 333, 5 Atl. 695; *People v. Colorado Title & Trust Co. (Colo.)* 178 Pac. 6; *Brooks-Scanlon Co. v. Railroad Commissioners of Louisiana*, 144 La. 1086, 81 South. 727.

In the case of *State v. Dodge City, M. & T. Ry. Co.*, *supra*, the Supreme Court of Kansas, in discussing a similar question, said:

“Railroads, like all other public thoroughfares, are public instrumentalities. The power to construct and maintain railroads is granted to corporations for a public purpose. The right to exercise the very high attributes of sovereignty, the

power of eminent domain and of taxation, to further the construction of railways, could not be granted to aid a purely private enterprise. The railway corporation takes its franchises subject to the burden of a duty to the public to carry out the purposes of the charter. The road, when constructed, becomes a public instrumentality, and the roadbed, superstructure, and other permanent property of the corporation are devoted to the public use. From this use neither the corporation itself, nor any person, company, or corporation, deriving its title by purchase, either at voluntary or judicial sale, can divert it without the assent of the state. It matters not whether the enterprise as an investment be profitable or unprofitable; the property may not be destroyed without the sanction of that authority which brought it into existence. Without legislative sanction, railroads could not be constructed. When once constructed, they may only be destroyed with the sanction of the state."

(2) This we think is the true rule. In the instant case, as may be observed from the statement, the state was not made a party to the suit until after the decree of foreclosure had been entered and the sale of the property made, when the Railroad Commission was permitted to intervene and be made a party. There is no contention that the consent of the state to the discontinuance of the road had been secured. On the contrary, it is alleged in the suggestion and petition that, upon application by the railroad company to the Railroad Commission, consent to the discontinuance of operation of its road had been denied.

It follows that the portion of the decree of foreclosure authorizing the dismantling of the road was in excess of the jurisdiction of the court.

The demurrer to the suggestion and petition is overruled, and the peremptory writ of prohibition will be issued, unless the respondent files a plea or answer within 30 days.

TAYLOR, ELLIS and WHITFIELD, JJ., concur.

BROWNE, C. J., absent and not participating.

WHITFIELD, J. (concurring). A common carrier railroad company is a corporate entity with franchise rights and obligations, and its property is devoted to a public service which is continuous under the laws of the state. The franchise rights of the corporation may be forfeited to the state; but the corporation cannot lawfully dismantle its roadbed of ties and rail and withdraw the property that has been devoted to the public service, without the acquiescence of the state in some manner prescribed by law.

While a court of equity may enforce a mortgage lien on the property of a railroad corporation by a sale of the property, the court has no authority to order or permit the track and other property of the company to be withdrawn or removed from the public service to which it was devoted, except as may be prescribed by statute; and there is no statute in this state giving such authority to the courts or to other tribunals.

Mortgage contracts cannot give to the courts a power not conferred by law. In this case the contract lien is upon the property of the railroad company as an operating entity charged with the public duty; and the lien can give no right to destroy the operating character of the property in which the public have an interest; nor can the right of the mortgagees be enforced except pursuant to law. If the mortgage lien contracted for is ineffectual to secure the indebtedness, the mortgagee cannot justly complain, since the lien was taken under the law governing the subject-matter of the lien.

The court was without power to order a sale of the railroad company's track and property as junk, thereby destroying the public use of the corporate property, and the writ of prohibition should be made effective.

Office Supreme Court, U. S.
FILED

AUG 21 1920

JAMES D. WAHER,
CLERK.

In the Supreme Court of the
United States

October Term 1919

No. [REDACTED] 262

W. S. BULLOCK, Judge of the Circuit
Court of the Fifth Judicial Circuit
of the State of Florida, and WIL-
LIAM S. HOOD, Trustee,

Plaintiffs in Error,

vs.

THE STATE OF FLORIDA upon the rela-
tion of the Railroad Commission of
the State of Florida, et al.

Defendants in Error.

Come now the State of Florida by Van C.
Swearingen Attorney General, and the Railroad
Commission of the State of Florida, Defendants in

Error, joined by W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of the State of Florida, and William S. Hood, Trustee, Plaintiffs in Error, and respectfully move the Court to advance the above styled cause for hearing on the ground that the State of Florida is a party to the cause and because of the special and peculiar circumstances of this case appearing of record in the printed transcript and briefly summarized as follows:

In an equity suit for foreclosure of a railroad trust deed, or mortgage, the Circuit Court by its decree of foreclosure and sale authorized a dismantling of the railroad, and by the judgment here sought to be reviewed, the Circuit Judge was prohibited from proceeding to carry into effect said decree. In the meantime the railroad is being operated by a receiver appointed at the instance of the State authorities who deny the jurisdiction of the Circuit Court in a foreclosure proceeding to authorize the dismantling of the railroad and consequent discontinuance of service.

Substantial property rights of the defendant trustee are involved in this case, and in fairness and in justice to him, the State authorities desire the determination of the issues involved in this case as promptly and speedily as possible. The Supreme Court of the State gave the matter immediate consideration, and the case would seem to be such a

cause as under the Act of Congress (U. S. Revised Statutes, Sec. 949) is entitled to be advanced for hearing.

DOZIER A. DEVANE,

*Counsel for Attorney General and Railroad
Commission of Florida, Defendants in
Error.*

HOCKER & MARTIN,

RUSHMORE, BISBEE & STERN,

GEORGE C. BEDELL,

Counsel for Plaintiffs in Error.

NOV 15 1920
JAMES D. BAKER
CLERK

IN THE
Supreme Court of the United States

October Term, 1920

No. 262.

W. S. BULLOCK, Judge of the Circuit Court of the
Fifth Judicial Circuit of the State of Florida, and
WILLIAM S. HOOD, as Trustee,

Plaintiffs-in-Error,

against

THE STATE OF FLORIDA, upon the Relation of the
Railroad Commission of the State of Florida and
the Attorney General of the State of Florida,

Defendants-in-Error.

In Error to the Supreme Court of the State of Florida.

**BRIEF AND ARGUMENT FOR PLAINTIFFS-IN-
ERROR.**

GEORGE C. BEDELL,
Counsel for Plaintiffs-in-Error.

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IN THE
Supreme Court of the United States
October Term, 1920.

No. 262.

W. S. BULLOCK, Judge of the Circuit Court of the Fifth
Judicial Circuit of the State of Florida, and WILLIAM
S. HOOD, as Trustee,

Plaintiffs-in-Error,

against

THE STATE OF FLORIDA, upon the Relation of the Railroad
Commission of the State of Florida and the Attorney
General of the State of Florida,

Defendants-in-Error.

In Error to the Supreme Court of the State of Florida.

**BRIEF AND ARGUMENT FOR PLAINTIFFS-IN-
ERROR.**

Statement of the Case.

The above-entitled cause is now before the Court upon a writ of error and, in the alternative, upon an application for a writ of *certiorari*.

Hood, one of the plaintiffs-in-error (hereinafter sometimes referred to as the plaintiffs), as Trustee under a deed of trust of the Ocklawaha Valley Railroad Company, seeks the review of a judgment and writ of prohibition of the Supreme Court of Florida in an original proceeding instituted by that State, prohibiting the Judge of the Circuit Court for the Fifth Judicial Circuit of

Florida from approving or confirming a sale made under a decree of foreclosure in a cause pending in said Court wherein the plaintiff Hood was complainant and the Ocklawaha Valley Railroad Company was defendant, and from authorizing or decreeing the dismantling, taking up, or removing any of the rails or track of the Railroad Company and from exercising any further jurisdiction in the cause relating to the junking of the property (Transcript of Record, pp. 288-290, fols. 455-457). The foreclosure decree (*id.*, pp. 100-103, fols. 171-176) required that the railroad be first offered for sale as a common carrier and that, if as much as \$200,000 was bid therefor, such bid was to be accepted; otherwise the road was to be offered with the privilege on the part of the purchaser of dismantling it, but, if the bid received under such offering did not exceed by \$100,000 any bid for operation as a common carrier, the bid for such operation was to be accepted. The decree thus gave preference to a bid from anyone willing to operate the road and, in that regard, was in accordance with the practice approved in *New York Trust Company v. Portsmouth & Exeter Street Railway Company*, 192 Fed., 728 (Circuit Court of New Hampshire).

The decree was entered on December 24, 1917 (Transcript of Record, pp. 100-103, fols. 171-176), and the 4th day of February, 1918, was fixed as the date for the sale thereunder (*id.*, p. 110, fol. 183). Before such date, the sale, at the instance of the State (*id.*, pp. 109-110, fol. 183), was postponed indefinitely and the State's nominee (*id.*, p. 109, fol. 182) was appointed Receiver to operate the property for one year or until such time as he should report his inability to operate it (*id.*, pp. 110-111, fols. 184-185) and he is still operating it (*id.*, p. 15, fol. 30). As the Court later said (*id.*, p. 201, fol. 311):

"This receiver was appointed because it was urgently insisted on the part of the state, through

its Railroad Commission, that by proper management the road could be operated so as to pay operating expenses and a reasonable sum on the investment, and it was with an honest desire to make a test of this matter that this receiver was appointed."

The test was made and it proved that the road could not be operated profitably (*id.*, p. 191, fol. 293). After the Receiver had operated it for more than a year the sale was made (*id.*, p. 131, fol. 208, p. 254, fol. 392) under the terms above mentioned, that is, a preference (to the extent of \$100,000) was given to a bid from anyone who would continue it as a common carrier (*id.*, p. 254, fol. 392).

There was no bid for the road for operation as a carrier (*id.* p. 254, fol. 392), and it was sold to the only bidder therefor, the plaintiff Hood, for \$225,000, with the privilege of dismantling it (*id.*, p. 254, fol. 392).

Before the confirmation of the sale, a reference was made to a Master to take proofs and report his findings as to the practicability of the further operation of the road as a common carrier (*id.*, p. 178, fol. 273). After a full hearing he filed his report (*id.*, pp. 185-193, fols. 284-297), in which he found that the road had never paid expenses and stated further: "I find it is impracticable to further operate said Ocklawaha Valley Railroad." Upon exceptions to the Master's report and on confirmation of the sale under the foreclosure proceedings, the Court reviewed the operations of the Receiver and pointed out why the road could not be successfully operated or any bid obtained for it as a common carrier in the following language (*id.*, pp. 200-204, fols. 303-315):

"I find from the evidence in this case that this railroad has been one that has been constructed wholly from private resources; that is, there has (have) been no public grants or donations to aid

in the construction of this road. The history of this road shows that it was never a success. Prior to the present corporate existence there had been financial disasters and a foreclosure of a mortgage and a re-organization finally culminating in the present corporation. * * * It is estimated that this road cost between \$450,000.00 and \$500,000.00. * * * In order to secure the purchase money at foreclosure sale, bonds were issued endorsed to the Assets Realization Company and to secure these bonds a mortgage was given, which mortgage is now the subject of foreclosure. I find that the large sawmill interests at Silver Springs have been burned and abandoned and at Fort McCoy have been abandoned, so there is nothing now to supply the road in the way of sawmills except a little sawmill that can not be taken into consideration as forming much of an asset * * * and that outside of the sawmills, the business that supported this road was negligible. * * *

"The defendant corporation did not consent in terms, to the appointment of Mr. H. S. Cummings as receiver, but it did recognize the fact that he was the most available man, and if it was possible to succeed under any administration it would under his, by reason of the business connections that he enjoyed that might be used in the operation of this road. Mr. Cummings was a member of the Rodman Lumber Company and controlled a large amount of freights that went out from its mill at Rodman, and would be a vast benefit to the road, although he was not dependent upon this road and had not heretofore given it anything like a fair proportion of the business that this company produced.

"* * *

"Considerable testimony has been taken before the master and the records and the proof and different steps taken in this case and other records in other suits filed, all in connection with the operation of this road, and after a very full consideration thereof leaves *no doubt* in the mind of this court that *this Railroad is totally insolvent*, that it can-

not be operated so as to pay the cost of operation and taxes, and have any net income whatever.

"Its operation under the present receivership has been under the most favorable conditions. This receiver had contributed 64% of the freight and that unless it was under his direct control and management and operated in connection with his own business, there is no hope to control that business and the experience in the past years, he has not given a fair proportion of it, to this railroad.

"When I come to consider the Receiver's showing as to what he has earned, even after allowing him credit for some doubtful claims, and not charging anything for his personal services, I find there would just be a bare profit of a few hundred dollars between the actual cost in operation and his receipts. But if we come to consider taxes and a reasonable return on the money invested and allow anything for operating expenses to the receiver, or other head of the corporation, it would not pay operating expenses.

"I find that there are now some \$12,000 to \$16,000 taxes due, and while the Railroad Commission about 14 or 16 months ago tendered its good offices in behalf of having same reduced or some good discount, from this tax matter, so far we have no tangible result, and it must be assumed in this condition of affairs that none could have been obtained, for certainly time enough has passed.

"We find, then, in a brief summary of this matter that this is a railroad corporation wholly dependent upon the Atlantic Coast Line Railroad Company, at its northern terminus to get into Palatka and wholly dependent upon the Seaboard Air Line Railroad Company at its southern terminal, to reach Ocala. That the large sawmill interests that supported the road at this time have been abandoned; that they have never been replaced, and that there are no large interests now on or near the line of the road; that the Rodman Lumber Company at Rodman, Florida, in which

this receiver is a large stockholder, has not heretofore patronized the road except in a very limited way, that he is not in any sense dependent upon this road for the operation of his sawmill.

"The result of these conditions leaves this road wholly dependent upon two or three sources, for the *country is sparsely settled*, the timber nearly all gone, and very little farming interests.

"It is contended that this court has no jurisdiction to pronounce the decree authorizing the dismantling of the road but it is conceded that it has the right to have the mortgage foreclosed and that the property could be sold, but must be sold as a common carrier. I find nothing in our statute that confers the jurisdiction of these matters on the Railroad Commission and while I have read all of the authorities presented, there is a clear line of distinction between all of those adjudicated cases and the one now presented."

The conclusions of the Judge of the Circuit Court are fully supported by the record (see especially Transcript of Record, pp. 185-190, 242-243, 274-275), and their correctness was not questioned by the Supreme Court of the State.

Pending the entry of the order confirming the sale, the State applied to its Supreme Court for a writ of prohibition (*id.*, pp. 1-5, fols. 1-10) and a rule to show cause was issued (*id.*, pp. 13-18, fols. 24-34). Thereafter, upon the motion of the plaintiff Bullock, Judge of the Circuit Court, the State's suggestion was amended in several particulars so as to show the proceedings in two suits (hereinafter more particularly referred to) instituted by the State to enjoin the discontinuance of the operation of the road (*id.*, pp. 28-29, fols. 57-58), and so as to contain a transcript of all the proceedings in the foreclosure suit (*id.*, pp. 29-30, fols. 60-61). The plaintiff Hood demurred to the amended suggestion, one of his

grounds of demurrer being that, to grant the relief prayed for by the State would deprive him of his property without due process of law, and deny to him the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States (*id.*, p. 280, fol. 437).

Upon overruling the demurrer, the Supreme Court of Florida said (*id.*, p. 285, fol. 446):

"It matters not whether the enterprise, as an investment, be profitable or unprofitable. The property may not be destroyed without the sanction of that authority which brought it into existence. Without legislative sanction, railroads could not be constructed. When once constructed they may only be destroyed with the sanction of the State."

"This we think is the true rule."

A petition for a rehearing was denied (*id.*, p. 288, fol. 454) and the judgment and writ of prohibition complained of were then entered (*id.*, pp. 288-290, fols. 455-458).

Specification of Errors.

The errors complained of and assigned are as follows (*id.*, p. 296, fol. 473):

1. The Court erred in overruling the demurrer of the said W. S. Bullock, Judge of the Circuit Court of the Fifth Judicial Circuit of Florida.

2. The Court erred in overruling the demurrer of the respondent William S. Hood as Trustee.

3. The Court erred in its ruling and decision granting the writ of prohibition, bearing date December 11th, 1919.

The said several assignments are respectively based on the grounds following, to-wit:

The authority of the State of Florida alleged by the Railroad Commissioners and the Attorney General, and sustained by the Supreme Court of Florida, is repugnant to the Constitution of the United States, and operates to deprive respondent William S. Hood, as Trustee, of his property without due process of law, and subjects private property to public use without just compensation.

And on divers other grounds appearing on the face of the record.

Brief of the Argument.

We present the following points:

(1) THE JUDGMENT AND WRIT OF PROHIBITION UNDER REVIEW DEPRIVE THE PLAINTIFF HOOD OF HIS PROPERTY WITHOUT DUE PROCESS OF LAW, AND DENY TO HIM THE EQUAL PROTECTION OF THE LAW, CONTRARY TO THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Brooks-Scanlon Co. v. Railroad Commissioners of Louisiana, 251 U. S., 396, 399;
Munn v. Illinois, 94 U. S., 113, 116;
Mississippi Railroad Commission v. Mobile & Ohio Railroad, 244 U. S., 388;
Northern Pacific Railroad Co. v. North Dakota, 236 U. S., 585, 595;
Norfolk & Western Railway Co. v. West Virginia, 236 U. S., 605, 609, 614;
Anderson v. Dent, 85 Southern Rep., 151;
New York Trust Co. v. Portsmouth & Exeter Street Railroad Co., 192 Fed., 728;

State of Iowa v. Old Colony Trust Company,
 215 Fed., 307;
Statutes of Florida, Sections 2494 (1981);
 2495 (1982); 2501 (1987);
Constitution of Florida, Art. V, Sec. 11;
Central Bank & Trust Corporation v. Cleveland, 252 Fed., 530;
Jack v. Williams, 113 Fed., 823;
South Carolina v. Jack, 145 Fed., 281;
Butz v. City of Muscatine, 8 Wall., 575;
The J. E. Rumbell, 148 U. S., 1, 11;
Green v. Biddle, 8 Wheat., 76, 84;
Hood v. Ocklawaha Valley R. Co., 84 Southern Rep., 97;
Bronson v. Kinzie, 1 How., 311;
Gantly's Lessee v. Ewing, 3 How., 707;
Barnitz v. Beverly, 163 U. S., 118;
Bradley v. Lightcap, 195 U. S., 1;
Ochoa v. Hernandez, 230 U. S., 140, 161;
Smyth v. Ames, 169 U. S., 466.

(2) THE JUDGMENT AND WRIT OF PROHIBITION UNDER
 REVIEW SHOULD BE REVERSED AND VACATED AND THE PETI-
 TION FOR A WRIT OF PROHIBITION SHOULD BE DENIED, WITH
 COSTS.

POINT I.

The judgment and writ of prohibition under review deprive the plaintiff Hood of his property without due process of law, and deny to him the equal protection of the law, contrary to the Fourteenth Amendment to the Constitution of the United States.

In *Brooks-Scanlon Co. v. Railroad Commission of Louisiana*, 251 U. S., 396, this Court recently said (p. 399):

"A carrier cannot be compelled to carry on even a branch of business at a loss It is true that if a railroad continues to exercise the power conferred upon it by a charter from the State, the State may require it to fulfill an obligation imposed by the charter even though fulfillment in that particular may cause a loss. . . . But that special rule is far from throwing any doubt upon a general principle too well established to need further argument here. . . . If the plaintiff be taken to have granted to the public an interest in the use of the railroad, it may withdraw its grant by discontinuing the use when that use can be kept up only at a loss."

See also:

Munn v. Illinois, 94 U. S., 113, 116;
Mississippi Railroad Commission v. Mobile & Ohio Railroad Co., 244 U. S., 388;
Northern Pacific Railway Co. v. North Dakota, 236 U. S., 585, 595;
Norfolk & Western Railway Co. v. West Virginia, 236 U. S., 605, 609, 614.

The decision of the Supreme Court of Florida now under review was rendered August 12th, 1919, or several months prior to the decision of this Court in *Brooks-Scaulon Co. v. Railroad Commission of Louisiana*, 251 U. S., 183, *supra*; but upon appeal from the interlocutory order appointing Cummings as Receiver as above mentioned, the Court in denying a petition for rehearing filed by the plaintiff Hood said

"Upon an application for rehearing the case of *Brooks-Scaulon Co. v. Railroad Commission of Louisiana*, 251 U. S., , 40 Sup. Ct., 183, 64 L. Ed., , has been called to the attention of the court with the suggestion that it holds to the contrary of the conclusion reached in this case on the present appeal and upon the appeal when the case was here upon a former hearing (*State ex rel. R. R. Commission et al. v. Bullock*, Circuit Judge, 82 South., 866). There is no conflict in the two cases. We held on the former appeal in this case that a court of equity in this state has no jurisdiction in a suit brought by a trustee for bondholders against a common carrier to foreclose a trust deed upon the properties of such railroad company given to the trustee to secure the payment of the indebtedness of the railroad company, without the assent of the state, to order the railroad dismantled, its property sold and removed, and its operation as a common carrier discontinued. No such question as this was passed upon by the Supreme Court of the United States in the case of *Brooks-Scaulon Co. v. R. R. Commission of Louisiana*, *supra*. The expressed views of this court are not out of harmony with the conclusions reached in that case." (BROWN, C. J., dissenting.)

Hood v. Ocklawaha Valley R. R. Co., 84 Sou., 97.

The Court's finding that the railroad in question cannot be operated except at a loss is conclusive and binding and has not been questioned by the Supreme Court of Florida.

Before such conclusion was reached, however, the State of Florida was not only given an opportunity to test that matter through the operation of the road for more than a year by a Receiver of its own choice, but was given every opportunity to prove the contrary. It was formally made a party to this cause on March 27, 1919 (Transcript of Record, pp. 183-184, fol. 282), but had been actively engaged in the litigation for more than a year prior thereto (*id.*, pp. 109-110, fols. 182-183). It appeared before and was heard (*id.*, p. 182, fol. 279) by the Master, who found that further operation was impracticable (*id.*, p. 191, fol. 293). Moreover, prior to the institution of the foreclosure suit, the State through its Railroad Commission had denied an application of the Railroad for leave to discontinue the operation of its trains (*id.*, p. 14, fol. 27; pp. 18-19, fols. 35-37) and had commenced a suit in Putnam County, Florida, for a mandatory injunction to prevent the discontinuance of service on the road and its dismantling (*id.*, pp. 266-268, fols. 415-417). Later the State, through the same Railroad Commission, filed an ancillary suit in Marion County, Florida, for the same purpose (*id.*, pp. 230-232, fols. 358-361). Full hearings were had in the ancillary suit (*id.*, pp. 239-243, fols. 369-376) and the complaint therein dismissed for want of equity (*id.*, p. 252, fol. 388), the judgment of dismissal confirming and being based upon the report of a Master who found, among other things, that the operation of the road for the preceding two and a half years had been at a loss of \$35,000 (*id.*, p. 243, fol. 375).

In the opinion rendered upon the demurrer to the

suggestion in the prohibition case, something is said to the effect that the State was not made a party to the suit until after the decree of foreclosure had been entered and the sale of the property made, but when the Court came to settle the judgment to be rendered in the case, its ruling was not based upon any matter of procedure, but squarely upon the authority of the Circuit Court, which was prohibited "from exercising any further jurisdiction in said cause relating to the junking of said property" and "from undertaking by decree, order or otherwise to authorize the dismantling of said railroad, or the taking up and selling of the rails therefrom" (Transcript of Record, p. 290, fol. 457). And this view has expression by the same Court in the subsequent case of *Anderson v. Dent*, 85 Sou. Rep., 151.

In the *Portsmouth & Exeter Street Railroad* case, 192 Fed., 728, *supra*, the Court dealt with a situation where the laws of the State under which the railroad was constructed declared (p. 729):

"That all railroads are public and that the proprietors thereof shall not discontinue them or any part of them,"

yet sustained an alternative right of dismantling after the public interests had been given primary consideration.

There was and is no such statute in Florida.

By statute in Florida:

"2494. (1981) All deeds of conveyance, obligations conditioned or defeasible, bills of sale or other instruments of writing conveying or selling property, either real or personal, for the purpose or with the intention of securing the payment of money, whether such instrument be from the debtor to the creditor or from the debtor to some third person in trust for the creditor, shall be

deemed and held mortgages, and shall be subject to the same rules of foreclosure and to the same regulations, restraints and forms as are prescribed in relation to mortgages."

"2495. (1982) A mortgage shall be held to be a specific lien on the property therein described, and not a conveyance of the legal title or of the right of possession."

"2501. (1987) All mortgages shall be foreclosed in chancery."

These statutes were in force when the trust deed was made.

By Article V, Sec. 11, of the Constitution of Florida,

"The Circuit Courts shall have exclusive original jurisdiction in cases in equity."

It follows from these provisions of the statutes and Constitution that the Trustee's rights are limited to the rights of a lienor, that is, to the *proceeds* of the mortgaged property, and do not extend to the *corpus*, and that enforcement of the lien can only be sought by foreclosure in the Circuit Court. Denial to a trustee of the right to subject the proceeds of the property to his lien is a deprivation of the very substance of his right.

It is idle to say that the Trustee may have the property sold for use as a common carrier. No one would buy it subject to that use and there were in fact no bidders in response to the offering at the Master's sale of the property for use as a common carrier. No one would buy what would carry with it a certain liability in excess of any possible profit. To say that the Trustee may only take what he cannot use and what he cannot sell and what he must employ for the use of others without compensation, is to say that the Trustee is to have less than nothing.

A similar case was determined by Judge SIMONTON, sitting in the Circuit Court, in the case of *Jack v. Williams*, 113 Fed. Rep., 823, affirmed as *State of South Carolina v. Jack*, 145 Fed. Rep., 281, and we can add little to what is contained in the opinion in that case, excepting to cite the subsequent cases of

Central Bank & Trust Corporation v. Cleveland, 252 Fed. Rep., 530, C. C. A. Fourth Circuit;

State of Iowa v. Old Colony Trust Co., 215 Fed. Rep., 307;

New York Trust Co. v. Portsmouth & Exeter St. Ry. Co., 192 Fed. Rep., 728, Circuit Court of New Hampshire; and

Brooks-Scanlon Co. v. R. R. Commission of Louisiana, 251 U. S., 183.

In the case of *State of Iowa v. Old Colony Trust Co.*, 215 Fed., 307, the contention that the Court, in a foreclosure suit, the main purpose of which was to enforce the lien of the mortgage, had no jurisdiction to order the abandonment of the road was made in behalf of the State, but in its opinion the Circuit Court of Appeals for the Eighth Circuit says:

"We think the Court not only had the power to make the order complained of in the foreclosure suit, but that its exercise under all the facts and conditions of this case was wise and for the best interests of all concerned."

A like result was reached by Judge ALDRICH in the case of *New York Trust Co. v. Portsmouth & Exeter St. Ry. Co.*, 192 Fed. Rep., 728.

The Supreme Court of Florida has indicated no other means whereby a mortgagee can have relief than by fore-

closure suit and the statutes above set forth make it clear that he must get his relief from the proceeds of the foreclosure sale or not at all. To deny him the right in the foreclosure case to have the property sold for the purpose of dismantling is to deny him the only redress that will permit him to subject all that is of any value to the lien of his mortgage. The statutes stand to-day precisely as they stood when the Trust Deed was made.

"A remedy, which the statutes of a State, on what this Court considers a plainly right construction of them, give for the enforcement of contracts, cannot be taken away, as respects previously existing contracts, by judicial decisions of the State courts construing the statutes wrongly.

"Where a question involved in the construction of State statutes practically affects those remedies of creditors which are protected by the Constitution, this Court will exercise its own judgment on the meaning of the statutes, irrespectively of the decisions of the State Courts, and if it deems these decisions wrong will not follow them; and this whether the case comes here from the Circuit Court in ordinary course, or from the Supreme Court of the State under the 25th section of the Judiciary Act."

Butz v. City of Muscatine, 8 Wall., 575,
Headnotes 4 and 3.

The holding of the Supreme Court of Florida affects the essential qualities of the plaintiff's lien and, as has been more than once said by this Court,

"a lien is a right of property, and not a mere matter of procedure."

The J. E. Rumbell, 148 U. S., p. 11.

"If the remedy afforded be qualified and restrained by conditions of any kind, the right of the owner may indeed subsist, and be acknowledged, but it is impaired and rendered insecure,

according to the nature and extent of such restrictions.

"The objection to a law, on the ground of its impairing the obligation of a contract, can never depend upon the extent of the change which the law effects in it. Any deviation from its terms, by postponing or accelerating the period of performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, however minute or apparently immaterial in their effect upon the contract of the parties, impairs its obligation."

Green v. Biddle, 8 Wheat., 76 and 84.

So in *Bronson v. Kinzie*, 1 How., 311, TANEY, C. J., says:

"* * * it is manifest that the obligation of the contract, and the rights of a party under it, may, in effect, be destroyed by denying a remedy altogether; or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing. * * *

"It is this protection which the clause in the constitution now in question mainly intended to secure. And it would be unjust to the memory of the distinguished men who framed it, to suppose that it was designed to protect a mere barren and abstract right, without any practical operation upon the business of life. It was undoubtedly adopted as a part of the constitution for a great and useful purpose. It was to maintain the integrity of contracts, and to secure their faithful execution throughout this Union, by placing them under the protection of the constitution of the United States. And it would but ill become this Court under any circumstances, to depart from the plain meaning of the words used, and to sanction a distinction between the right and the remedy, which would render this provision illusive and nugatory; mere words of form, affording no protection, and producing no practical result."

And applying these principles to the right of a mortgagee to the enforcement of his lien, the Chief Justice continues:

“* * * it is his absolute and undoubted right, under an ordinary mortgage deed, if the money is not paid at the appointed day, to go into the court of chancery, and obtain its order for the sale of the whole mortgaged property (if the whole is necessary), free and discharged from the equitable interest of the mortgagor. This is his right, by the law of the contract; and it is the duty of the court to maintain and enforce it, without any unreasonable delay.

“When this contract was made, no statute had been passed by the State changing the rules of law or equity in relation to a contract of this kind. None such, at least, has been brought to the notice of the court; and it must, therefore, be governed, and the rights of the parties under it measured, by the rules above stated. They were the laws of Illinois at the time; and, therefore, entered into the contract, and formed a part of it without any express stipulation to that effect in the deed.”

To similar effect:

Gantly's Lessee v. Ewing, 3 Howard, 707;
Barnitz v. Beverly, 163 U. S., 118;
Bradley v. Lightcap, 195, U. S., 1.

No amount of discussion can mitigate or alter the practical effect of the ruling of the Court, which is to take from the plaintiff's security all that there is of any value in it that the property may be held for public use, and this is depriving plaintiff of his property without due process of law.

Brooks-Scanlon Co. v. R. R. Commissioners of Louisiana, 251 U. S., 183;
Ochoa v. Hernandez, 230 U. S., 140, 161.

If it be argued that so to dispose of the property under the foreclosure suit is to affect the right of the State without the public being represented, we can only say that the Constitution and laws of Florida make no provision for legal proceedings against the State, except upon its own motion; and repeat that, as a matter of fact, the State of Florida has participated in the foreclosure suit since before the appointment of the Receiver; that it refused the Railroad Company permission to discontinue the operation of its trains; that it brought a plenary suit to compel such operation, which was decided adversely to its contentions on the merits, and further to point out that the judgment and writ of prohibition under review do not stay proceedings until the State shall have had an opportunity to be heard, but prohibit the Court from authorizing or decreeing the dismantling, taking up or removing any of the rails or track of the said Ocklawaha Valley Railroad Company and from exercising any further jurisdiction in the cause relating to the junking of said property (Transcript of Record, p. 290, fol. 457).

The effect of the judgment and writ of prohibition of the Supreme Court of Florida was to restrict the plaintiff's right to the sale of the property with this limitation upon its use: that it shall not be dismembered when its use means continuing loss. Under the decisions of this Court that is confiscation.

Smyth v. Ames, 169 U. S., 466;
Northern Pacific Ry. Co. v. North Dakota,
236 U. S., 585;
Norfolk & Western Ry. Co. v. West Virginia,
236 U. S., 605.

POINT II.

The judgment and writ of prohibition under review should be reversed and vacated, and the petition for a writ of prohibition should be denied, with costs.

Respectfully submitted,

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